

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 30

DANIEL D. GLASSER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 31

NORTON L. KRETSKE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 32

ALFRED E. ROTH, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**Writs of Certiorari to the United States Circuit Court
of Appeals for the Seventh Circuit**

PETITIONS FOR CERTIORARI FILED FEBRUARY 28, 1941

CERTIORARI GRANTED APRIL 7, 1941

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.

DANIEL D. GLASSER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No.

NORTON I. KRETSKE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No.

ALFRED E. ROTH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

Index to printed record of proceedings in U. S. District Court	
Clerk's certificate to printed record (without bill of exceptions)	138a
Clerk's certificate to volume I of bill of exceptions....	622a
Clerk's certificate to volume II of bill of exceptions....	1071
Index to proceedings in U. S. Circuit Court of Appeals:	
Placita	1073
Order of July 10, 1940, consolidating causes, etc....	1074
Certificate of Hoyt King, Clerk, U. S. District Court, to exhibits.....	1075
Supplemental certificate of Hoyt King, Clerk, U. S. District Court to exhibits.....	1093
Petition for order on U. S. Attorney to produce missing exhibits	1094
Answer to petition for order on U. S. Attorney to produce missing exhibits.....	1096
Reply to answer of U. S. Attorney for order to produce missing exhibits.....	1097
Additional answer of U. S. Attorney.....	1100
Order of Aug. 14, 1940, directing U. S. Attorney to transmit exhibits to U. S. Circuit Court of Appeals	1102
Additional assignment of error, filed in cause No. 7315	1103
Additional assignment of error, filed in cause No. 7316	1104
Additional assignment of error, filed in cause No. 7317	1105
Motion by U. S. Attorney to suppress brief of appellant Glasser	1105
Points and authorities in support of motion.....	1106

Affidavit of Francis J. McGreal.....	1108
Memorandum in support of answer to motion to suppress brief of appellant Glasser.....	1112
Order of Sept. 13, 1940, denying motion to sup- press brief of appellant Glasser.....	1116
Opinion by Kerner, J., filed Dec. 13, 1940.....	1117
Judgment as to appellant Glasser, affirming, en- tered Dec. 13, 1940.....	1139
Judgment as to appellant Kretske, affirming, en- tered Dec. 13, 1940.....	1140
Judgment as to appellant Roth, affirming, entered Dec. 13, 1940.....	1140
Petition for rehearing in cause No. 7315, filed Dec. 24, 1940	1141
Petition for rehearing in cause No. 7316, filed Dec. 24, 1940	1181
Petition for rehearing in cause No. 7317, filed Dec. 24, 1940	1189
Answer to appellants' petitions for a rehearing, filed Dec. 31, 1940.....	1211
Brief of Amicus Curiae, filed Jan. 4, 1941.....	1219
Memorandum in support of petition for rehearing of appellant Glasser, filed Jan. 7, 1941.....	1231
Orders denying petitions for rehearing, entered Jan. 23, 1941.....	1239
Præcipe for record on certiorari.....	1240
Clerk's certificate	1243
Verdict of jury filed March 8, 1940	1244
Orders allowing certiorari	1245

TRANSCRIPT OF RECORD

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,

Plaintiff Appellee,

7315

vs.

DANIEL D. GLASSER,

Defendant Appellant.

THE UNITED STATES OF AMERICA,

Plaintiff Appellee,

7316

vs.

NORTON I. KRETSKE,

Defendant Appellant.

THE UNITED STATES OF AMERICA,

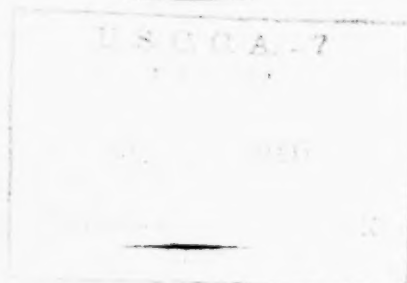
Plaintiff Appellee,

7317

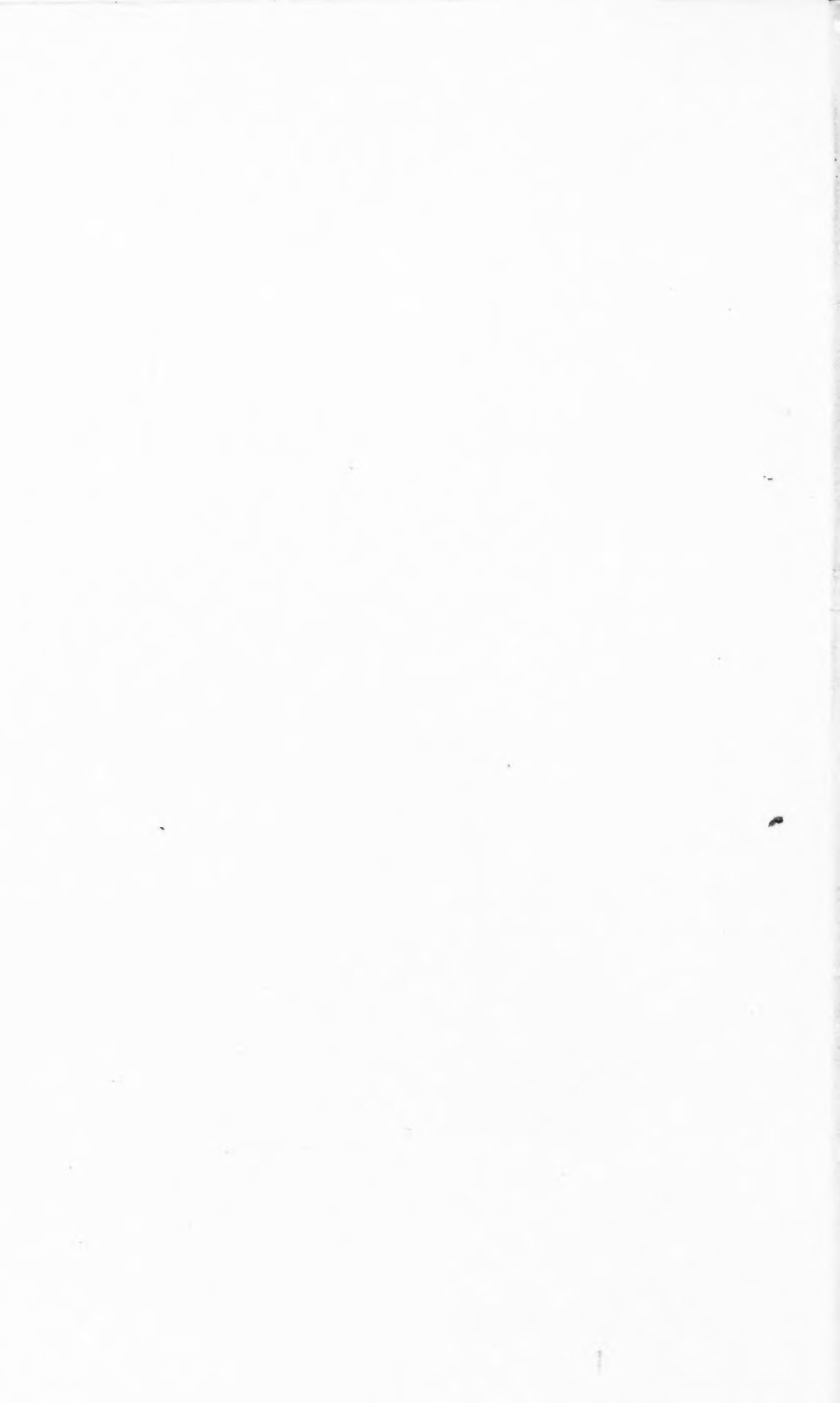
vs.

ALFRED E. ROTH,

Defendant Appellant.



Appeals from the District Court of the United States in
the Northern District of Illinois, Eastern Division.



IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

7315 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

DANIEL D. GLASSER,
Defendant-Appellant.


7316 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

NORTON I. KRETSKE,
Defendant-Appellant.

7317 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

ALFRED E. ROTH,
Defendant-Appellant.

Appeals from the District Court of the United States for
the Northern District of Illinois, Eastern Division.





INDEX.

Placita	1
Indictment, filed Sept. 29, 1939	2
Order as to filing Motion, entered Oct. 12, 1939.....	40
Order on Motion to quash, entered Oct. 31, 1939.....	40
Appearance for Glasser, filed Nov. 1, 1939.....	41
Appearance for Kretske, filed Nov. 2, 1939.....	41
Order denying motion to quash, entered Nov. 7, 1939..	42
Demurrer as to Defendant Roth, filed Nov. 10, 1939...	42
Demurrer as to Defendant Glasser, filed Nov. 10, 1939.	48
Demurrer as to Defendant Kretske, filed Nov. 10, 1939.	55
Order overruling Demurrers, entered Nov. 16, 1939...	60
Order extending time for Defendants to file motions for Bill of Particulars, entered Nov. 22, 1939.....	60
Petition of Glasser for Bill of Particulars, filed Nov. 29, 1939	61
Petition of Roth for Bill of Particulars, filed Nov. 29, 1939	65
Petition of Kretske for Bill of Particulars, filed Nov. 29, 1939	72
Order as to Answer to Bills of Particulars, entered Dec. 20, 1939	76
Bill of Particulars, filed Dec. 28, 1939	77
Order as to reconsideration of Demurrer of Roth, en- tered Jan. 23, 1940	90
Petition of Kretske for more specific Bill of Particu- lars, filed Jan. 27, 1940	90
Order denying motion for more specific Bill of Par- ticulars, entered Jan. 29, 1940.....	93
Order denying Petition of Roth for reconsideration of Demurrer, etc., entered Jan. 29, 1940.....	94
Order denying motion to Strike Bill of Particulars, entered Jan. 29, 1940	94
Order on plea of not guilty, etc., entered Jan. 29, 1940.	95
Appearance for Glasser, filed Jan. 29, 1940	95
Appearance for Roth, filed Feb. 5, 1940	96

Order denying motion of Kretske for continuance, etc., entered Feb. 5, 1940	96
Order as to trial, entered Feb. 5, 1940	97
Order as to appointment of Attorney, entered Feb. 6, 1940	97
Motion to exclude proposed testimony of Alexander Campbell, filed Feb. 23, 1940	98
Order on motion for directed verdict, etc., entered Feb. 26, 1940	99
Order dismissing as to Count One of the Indictment, entered Feb. 27, 1940	100
Order on motion for directed verdict, etc., entered Mar. 5, 1940	100
Order on Juries verdict, and motions to find not guilty and for new trial, entered Mar. 8, 1940	101
Order continuing motions for new trial, entered Apr. 8, 1940	102
Order continuing motions for new trial. entered Apr. 22, 1940	102
Order denying motion for finding of not guilty and new trial, entered Apr. 23, 1940	103
Judgment, entered Apr. 23, 1940	104
Notice of Appeal of Kretske, filed Apr. 26, 1940.....	105
Grounds of Appeal	106
Notice of Appeal of Glasser, filed Apr. 26, 1940.....	108
Grounds of Appeal	109
Notice of Appeal of Roth, filed Apr. 27, 1940.....	111
Grounds of Appeal	112
Joint and Several Assignment of Errors, filed June 27, 1940	114
Order as to Bill of Exceptions, entered May 17, 1940...	129
Order as to Original exhibits, entered May 17, 1940...	131
Praecipe for Record	132
Clerk's Certificates	136
Motion as to Printing Record	137
Order as to printing Record	138

For the Northern District of Illinois,

Eastern Division.

Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the division and district aforesaid on the first Monday of September (it being the twenty-ninth day of September the indictment was filed) in the year of our Lord One Thousand Nine Hundred and Thirty-nine and of the Independence of the United States of America the 164th year.

Present :

The Honorable James H. Wilkerson, The Honorable Philip L. Sullivan, The Honorable Charles E. Woodward being Judges of said Court and The Honorable Patrick T. Stone, Judge of the Western District of Wisconsin sitting by designation.

The Honorable Patrick T. Stone, Trial Judge.

William H. McDonnell, U. S. Marshal.

Hoyt King, Clerk.

Filed 4
Sept. 29,
1939.

And on, to wit, the 29th day of September, A. D., 1939, was filed in the Clerk's office of said Court a certain INDICTMENT in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

For the Northern District of Illinois,
Eastern Division.

Of the September Term, in the year 1939.

First Count.

Northern District of Illinois, } ss.
Eastern Division.

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the September Term of said Court in the year 1939, and inquiring for said division and district, upon their oath present:

1. That at all times covered by this indictment, subsequent to, to wit, March 15, 1935, the defendant hereinafter named, Daniel D. Glasser, was an Assistant United States Attorney for the Northern District of Illinois, employed under the provisions of the United States statute in such case made and provided to assist the United States Attorney to prosecute in his district all delinquents for crimes and offenses cognizable under the authority of the United States at Chicago, Illinois, and as such Assistant United States Attorney he did, at all times covered by this indictment, from time to time, in certain United States court rooms, United States Grand Jury rooms, and United States Commissioners' rooms, and in the office of the
6 United States Attorney at Chicago, and at other places in the aforesaid district, act for and on behalf of the United States in certain official functions under and by authority of the Department of Justice of the United States, and as such officer of the United States, he did, at all times covered by this indictment, have certain decisions to make and actions to take on certain questions, matters,

causes and proceedings which were from time to time pending and which were from time to time brought before him in his capacity as such official in the performance of his duties as such Assistant United States Attorney, that is to say, the said Daniel D. Glasser was required to perform certain duties for and on behalf of the United States as Assistant United States Attorney in prosecuting various persons who were from time to time charged with committing certain offenses against the laws of the United States, namely, to wit, the offenses of unlawfully possessing a still set up not registered as required by law; with carrying on the business of a distillery and wilfully and feloniously failing to pay taxes on spirits distilled; with carrying on the business of a wholesale liquor dealer and wilfully failing to pay the special tax required by law; with carrying on the business of a distiller and wilfully failing to display the sign "registered distillery" as required by law; with carrying on the business of a distiller without having given the bond required by law; with having made and fermented a mash fit for distillation in a building other than a duly qualified registered distillery; with having unlawfully removed and concealed goods and commodities on which a tax was imposed with intent
7 to defraud the United States of such tax; with unlawful possession of distilled spirits, the containers of which did not have affixed stamps required by law to denote payment of the internal revenue taxes imposed thereon; which offenses are more clearly defined and set forth under Title 26 of the United States Code of Laws;

2. That part of the time covered by this indictment, namely, from, to wit, March 15, 1935, to to wit, April 15, 1937, Norton I. Kretzke was an Assistant United States Attorney for the Northern District of Illinois employed under the provisions of the United States statutes in such case made and provided to assist the United States Attorney to prosecute in his district all delinquents for crimes and offenses cognizable under the authority of the United States at Chicago, Illinois, and as such Assistant United States Attorney he did, from time to time, in certain United States court rooms and United States Grand Jury rooms, and United States Commissioners' rooms, and in the office of the United States Attorney at Chicago, and at other places in the aforesaid district, act for and on behalf of the United States in certain official functions under and by authority of the Department of Justice of

the United States, and as such officer of the United States he did have certain decisions to make and actions to take on certain questions, matters, causes, and proceedings which were from time to time pending and which were from time to time brought before him in his capacity as such official in the performance of his duties as such

Assistant United States Attorney, that is to say, the said Norton I. Kretzke was required to perform certain duties for and on behalf of the United States as Assistant United States Attorney in prosecuting various persons who were from time to time charged with committing certain offenses against the laws of the United States, namely, to wit, the offenses of unlawfully possessing a still set up not registered as required by law; with carrying on the business of a distillery and wilfully and feloniously failing to pay taxes on spirits distilled; with carrying on the business of a wholesale liquor dealer and wilfully failing to pay the special tax required by law; with carrying on the business of a distiller and wilfully failing to display the sign "registered distillery" as required by law; with carrying on the business of a distiller without having given the bond required by law; with having made and fermented a mash fit for distillation in a building other than a duly qualified registered distillery; with having unlawfully removed and concealed goods and commodities on which a tax was imposed with intent to defraud the United States of such tax; with unlawful possession of distilled spirits, the containers of which did not have affixed stamps required by law to denote payment of the internal revenue taxes imposed thereon; which offenses are more clearly defined and set forth under Title

26 of the United States Code of Laws;

9 3. That at certain times covered by this indictment, subsequent to, to wit, March 15, 1935, the defendant hereinafter named, Louis Kaplan, well known to the defendants, was a person committing certain offenses against the United States, namely, offenses against the alcohol tax laws, and was a person associating himself with certain persons well known to the defendants to be offenders against the laws of the United States, that is, the Alcohol Tax Laws;

4. That at all times covered by this indictment, subsequent to March 15, 1935, the defendant hereinafter named, Alfred E. Roth, was an attorney at law, well known to

the defendants, and was duly licensed to practice law in the courts of the United States;

5. That at all times covered by this indictment, subsequent to March 15, 1935, the United States did maintain a certain governmental agency known as the Alcohol Tax Unit, a unit of the Bureau of Internal Revenue in the Treasury Department of the United States;

6. That at all times covered by this indictment, subsequent to the date aforesaid, the duties of the Alcohol Tax Unit, well known to the defendants, were to enforce the Treasury rules and regulations governing the production and distribution of alcohol and to supervise the various distilleries and breweries that operate under government supervision, and to enforce the laws pertaining to the traffic in non-tax-paying alcohol;

7. That at all times covered by this indictment subsequent to the date aforesaid, the Alcohol Tax Unit, well known to the defendants aforesaid, to carry out the governmental function aforesaid, did employ and maintain a certain staff of special investigators and investigators, to wit, one hundred and fifty men who performed the duties of investigating violations of the Alcohol Tax Laws and making arrests therefor, and that during the time aforesaid the said investigators would from time to time visit the office of the United States Attorney for the purpose of securing authorization from the said United States Attorney to file criminal complaints against certain persons arrested for Alcohol Tax Law violations;

8. That it was the lawful duty of said defendants, Daniel D. Glasser and Norton I. Kretske, well known to the defendants, as Assistant United States Attorneys acting for and on behalf of the United States, to prosecute offenders of the Alcohol Tax Laws, that is to say, it was the lawful duty, well known to the defendants, of the said Daniel D. Glasser and Norton I. Kretske to hear and review certain facts presented to them from time to time by said investigators representing the aforesaid governmental agency and to make decisions and take action thereon to the end that said investigators would know whether or not said offenders were guilty in law as well as fact and that they would be so prosecuted by the United States, that is to say, whether or not certain complaints would be authorized to be filed against them upon which warrants would issue for their arrest;

9. That at times covered by this indictment subsequent

to March 15, 1935, it was the lawful duty of said defendants, Daniel D. Glasser and Norton I. Kretske, which duty was well known to the defendants, as Assistant United States Attorneys acting for and on behalf of the United States, to appear before the various United States Grand Juries summoned to hear questions, matters, and causes, and to vote indictments and present to them, the members of said Grand Juries, certain facts furnished to them by said investigators indicating or failing to indicate that certain persons had offended against the laws of the United States, particularly the Alcohol Tax Laws, and as a consequence thereof were guilty or not guilty of certain felonies, and that said defendants well knew that the said Daniel D. Glasser and the said Norton I. Kretske, in the performance of their lawful duty or duties, did, from time to time, appear before said United States Grand Juries for the purpose of presenting to them, the members of the said Grand Juries, certain facts;

12 10. That on, to wit, April 15, 1937, the said defendant, Norton I. Kretske, resigned as an Assistant United States Attorney, a fact well known to the defendants, and subsequently thereto, down to and including the date of this indictment, said defendant held no official position with the Government of the United States;

11. That at all times covered by this indictment subsequent to, to wit, March 15, 1935, the defendant hereinafter named, Anthony Horton, commonly known as Tony Horton, well known to the defendants, was a professional bondsman who, during all the time covered by this indictment, did from time to time in the district aforesaid secure and provide certain sureties for various persons required to give bond to answer to criminal charges brought against them by the Government of the United States;

12. That, well known to the defendants, at certain times covered by this indictment subsequent to March 15, 1935, the following persons, Frank Hodorowicz, Peter Hodorowicz, Mike Hodorowicz, Anthony Hodorowicz, Walter Haleban, also known as Walter Hort, Clem Dowiat, Elmer Swanson, Christ del Rocco, Walter Kwiatkowski, Edward R. Dewes, Victor Raubunas, Edward Farber, Louis Pregonzei, Lincoln Rankin, Ralph Sharp, alias Ralph Bogush, William Wroblewski, Edward Wroblewski, Paul Svec, Stanley Wasiclawski, Stanley Slessur, otherwise known as Stanley Slasuraitis, Louis Kaplan, and

Adam Widzes, and many other persons to the grand jurors unknown, were arrested by officers of the United States and charged with unlawfully violating certain laws of the United States, namely, to wit, certain provisions of Title 26 of the United States Code, that is to say, the aforesaid persons were, subsequent to the date immediately aforesaid, arrested and charged with unlawfully possessing a still set up not registered as required by law; of carrying on the business of a distillery and wilfully and feloniously failing to pay taxes on spirits distilled; of carrying on the business of a wholesale liquor dealer and wilfully failing to pay the special tax required by law; of carrying on the business of a distiller and wilfully failing to display the sign "registered distillery" as required by law; of carrying on the business of a distiller without having given the bond required by law; of having made and fermented a mash fit for distillation in a building other than a duly qualified registered distillery; of having unlawfully removed and concealed goods and commodities on which a tax was imposed with intent to defraud the United States of such tax; of unlawful possession and transportation of distilled spirits; the containers of which did not have affixed stamps required by law to denote payment of the internal revenue taxes imposed thereon;

13. That subsequent to the arrest of the above persons they were given various hearings before the United States Commissioner on certain complaints filed there, and before certain District Judges on certain indictments pending there, and it was necessary for said persons from time to time to appear before said Commissioner and District Judges, that is to say, that said Peter Hodorowicz and Walter Hort did appear before said United States Commissioner; that is to say, the said Anthony Hodorowicz, Clem Dowiat, and Elmer Swanson did appear before said Commissioner and before District Judge Charles E. Woodward; that is to say, the said Walter Kwiatkowski did appear before said United States Commissioner; that is to say, the said Edward R. Dewes, Victor Raubunas, Edward Farber and Ralph Sharp, did have certain matters of and concerning themselves presented to the Grand Jury; that is to say, Louis Kaplan and Adam Widzes did have certain matters of and concerning themselves presented to the Grand Jury; that is to say, the said

Edward Dewes, Victor Raubunas, Edward Farber, Louis Pregonzei, Lincoln Rankin and Ralph Sharp did have certain true bills returned against them by the Grand Jury; that is to say, Edward Dewes, Victor Raubunas, Edward Farber, Louis Pregonzei, Lincoln Rankin, Ralph Sharp, alias Ralph Bogush, did appear before District Judge James H. Wilkerson to be arraigned on a certain indictment returned by the United States Grand Jury; that is to say, one Paul Svec did appear before the said United States Commissioner, and before the said United States District Judge to answer to a complaint and afterwards to an indictment; that is to say, one William Wroblewski and Edward Wroblewski and Stanley Wasie-lawski did have presented to a United States Grand
15 Jury certain matters of and concerning themselves upon which a true bill was returned and upon which they did later appear before a District Judge; that is to say, one Elmer Swanson and one Christ Del Rocco did appear before the said United States Commissioner; all of which was well known to the defendants:

14. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the defendants:

Daniel D. Glasser,

Norton I. Kretzke,

Anthony Horton, otherwise known as Tony Horton,

Louis Kaplan, and

Alfred E. Roth,

well knowing the premises aforesaid, in the City of Chicago, in the State and District aforesaid, and at other places to the said grand jurors unknown, heretofore, on, to wit, March 15, 1935, and thereafter continuously up to the date of the return of this indictment, in violation of the provisions of Section 88, Title 18, of the United States Code of Laws, did wilfully, unlawfully, and feloniously conspire, combine, confederate, and agree together, and with each other, and with divers other persons to the grand jurors unknown, to commit certain offenses against the laws of the United States, to wit, the offenses more particularly described and set forth in Section 91, Title 18, of the Code of Laws of the United States; that is to say, of promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function, under and by authority of a department and office of

the Government of the United States, with intent to
 16 influence his decision and action on certain questions, matters, causes, and proceedings which were at times pending, and which were by law brought before such officer or officers in his or their official capacity, and with the intent to influence such officer or officers to commit and aid in committing, and to collude in committing certain frauds on the United States, and/ to induce such officer or officers to do and to omit from doing certain acts in violation of his or their lawful duty;

15. That the conspiracy, combination, confederation, and agreement aforesaid was to be accomplished in the manner and means following, that is to say; that they, the said defendants, would solicit certain persons hereinafter referred to, charged with violating or about to be charged with violating the laws of the United States, to promise or cause to promise certain sums of money to be paid or pledged to the defendants herein to be used to influence and corrupt said defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity in their decisions and actions on certain questions, matters, causes, and proceedings which were at a certain time or times covered by this indictment by law brought before said Daniel D. Glasser and Norton I. Kretzke in their official capacity for their decision and action;

16. That they, the defendants, would solicit the certain persons hereinafter referred to, to offer certain sums of money to be paid to the defendants with the intent and purpose that they, the said defendants, would accept and use said money to corruptly, wrongfully, and improperly influence said defendants, Daniel D. Glasser and Norton I.

Kretzke, in their decision or decisions and action or
 17 actions on certain questions, matters, causes, and proceedings which were by law brought before them, the said defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity for their decision and action;

17. That they, the defendants, would solicit the certain persons hereinafter referred to, to offer certain sums of money to be paid to the defendants with the intent and purpose that they, the said defendants, would accept and use said money to corruptly, wrongfully, and improperly influence the said Daniel D. Glasser and Norton I. Kretzke, defendants, to dishonestly and wrongfully, and in violation of their lawful duty, aid the defendants in committing a certain fraud on the United States;

18. That the defendants would solicit the certain persons hereinafter referred to, charged or to be charged by the United States with violating the criminal laws of the United States, to promise, offer to promise, and procure to be promised, certain sums of money to the defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity to be used by the defendants to corruptly and wrongfully influence the said Daniel D. Glasser and Norton I. Kretzke to collude in a fraud on the United States;

19. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants Daniel D. Glasser and Norton I. Kretzke in their official capacity aforesaid, with the intent to corruptly, wrong-
18 fully and improperly influence the said Daniel D. Glasser and Norton I. Kretzke to allow a fraud to be committed on the United States;

20. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants Daniel D. Glasser and Norton I. Kretzke in their official capacity aforesaid, with the intent to corruptly, wrongfully and improperly influence the said Daniel D. Glasser and Norton I. Kretzke in their official capacity to dishonestly, wrongfully, and unlawfully make opportunity for the commission of a fraud on the United States;

21. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants Daniel D. Glasser and Norton I. Kretzke in their official capacity aforesaid with the intent to use said money to corruptly, wrongfully, and improperly induce the said Daniel D. Glasser and Norton I. Kretzke to do certain acts in violation of their lawful duties as Assistant United States Attorneys;

22. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants Daniel D. Glasser and Norton I. Kretzke in their official capacity with the intent to use said money to corruptly, wrongfully, and improperly induce said Daniel D. Glasser and
19 Norton I. Kretzke in their official capacity to omit to do certain acts, in violation of their lawful duty as Assistant United States Attorneys;

23. That the defendants, as part of said conspiracy,

would solicit from the certain persons hereinafter referred to, who were charged or to be charged with violating the criminal laws of the United States, certain sums of money, that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence the said Daniel D. Glasser to dishonestly, wrongfully, and unlawfully collude in a fraud on the United States;

24. That the defendants, as part of said conspiracy, would solicit from the certain persons hereinafter referred to, certain sums of money, that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence said Daniel D. Glasser to allow a fraud to be committed on the United States;

25. That the defendants, as part of said conspiracy, would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence said Daniel D. Glasser to dishonestly, wrongfully and unlawfully make opportunity for the commission of a fraud on the United States;

20 26. That the defendants, as part of said conspiracy, would solicit from certain persons hereinafter referred to, who were charged or about to be charged with violating the criminal laws of the United States, certain sums of money that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly induce said Daniel D. Glasser, to dishonestly, fraudulently, and unlawfully do certain acts in violation of his lawful duty as Assistant United States Attorney;

27. That the defendants, as part of said conspiracy, would solicit from the certain persons hereinafter referred to, certain sums of money that were to be promised to be paid to the defendant, Daniel D. Glasser in his official capacity, with the intent to corruptly, wrongfully, and improperly induce said Daniel D. Glasser to omit to do a certain act or acts in violation of his lawful duty as an Assistant United States Attorney;

28. That the said defendants would contact certain persons against whom certain criminal complaints were authorized to be filed before the United States Commissioner by the said Daniel D. Glasser and Norton I. Kretzke acting

in their respective official capacities, while and at the time said complaints were so pending and to be heard by the said Commissioner, and solicit from said persons certain sums of money; and they, the defendants, would at the time of said solicitation inform said persons that if they, the said persons, would pay to them, the said defendants, certain sums of money, they, the said defendants, would use the same to corruptly and wrongfully induce and persuade the said defendants, Daniel D. Glasser and Norton I.

Kretzke, to unfaithfully discharge their duties toward
21 the United States as Assistant United States Attorneys, and that they, the defendants, would be found not guilty and discharged;

29. That the said defendants would solicit from certain persons living and residing in the district aforesaid, who were well known to the defendants and who were under the belief that the United States was about to charge them with a violation of its laws, namely, the Alcohol Tax Laws, certain sums of money that they, the defendants, were to promise to be paid to the said Daniel D. Glasser and Norton I. Kretzke in their official capacities to corruptly and wrongfully induce the said Daniel D. Glasser and Norton I. Kretzke to make their decision so that they, the said persons, would not be charged with a violation of the laws of the United States;

30. That said defendants would solicit from certain persons, some of whom are hereinafter named, who had been arrested and charged with violating the laws of the United States and who were awaiting a hearing on said charges before the United States Commissioner, certain sums of money that were to be promised to be paid to the defendants Daniel D. Glasser and Norton I. Kretzke in their official capacity to cause them, the said Daniel D. Glasser and Norton I. Kretzke, to unlawfully commit a fraud on the United States by going before said United States Commissioner and making a certain legal motion to dismiss said charges;

22 31. That said defendants would solicit the persons hereinafter referred to, who were after hearing ordered by the said Commissioner to be held to the District Court to await the action of the Grand Jury and inform said person or persons or anyone acting for or on their behalf that the said Daniel D. Glasser in his official capacity was about to appear before a Grand Jury and present to it certain facts that would result in their being indicted

and that if they, the said persons hereinafter referred to, would promise to pay to the defendants a certain sum of money or sums of money, they, the defendants, would corruptly induce the said Daniel D. Glasser to so conduct said grand jury hearing and so present said facts that the grand jury members would be improperly advised of the facts and evidence the United States had secured against them, and if the said persons hereinafter referred to would promise to pay to said defendants certain sums of money, they, the said defendants would induce the said Daniel D. Glasser to withhold from the grand jury certain facts establishing their connection with the alleged offense which said grand jury was inquiring about, and as a result of said failure on the part of the defendant, Daniel D. Glasser, to properly perform his lawful duty, the grand jury would not have before it sufficient facts to legally warrant their returning a true bill against said persons and they would be compelled to return a no bill.

23 32. That said defendants were from time to time covered by this indictment to contact the defendant, Daniel D. Glasser, and ascertain from Daniel D. Glasser the names and addresses of persons about to be arrested, complained against, or indicted for a violation of the Alcohol Tax Laws of the United States, and the said Daniel D. Glasser, in violation of his lawful duty, would give to said defendants the information they, the defendants, well knew was confidential, and after receiving said information the defendants would contact said persons and solicit from them certain sums of money to be used to influence said Daniel D. Glasser so that he would corruptly render his judgment and decision affecting the prosecution of said persons;

33. That the defendants, Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, Norton I. Kretzke, and Alfred E. Roth, would from time to time covered by this indictment, contact certain persons hereinafter named who were defendants in certain criminal proceedings wherein the United States was plaintiff and they, the said persons, were defendants, and inform said defendants that for certain sums of money paid to them they, the said defendants, would corruptly influence said defendant, Daniel D. Glasser, who did appear from time to time in the various court rooms before the various District Judges representing and acting for and on behalf of the United States in his official capacity in the causes and proceedings affecting

the persons hereinafter named, to delay, continue, and unduly prolong said proceedings to the end that the
24 various witnesses called to testify in said causes and proceedings would become discouraged and disheartened and would cease to have interest in said proceedings and would fail to remember the parties defendant or the part they took in said violation and as a result thereby the said trial and proceedings would be unduly delayed and a fraud would be committed on the United States;

34. That the said defendants, Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, and Norton I. Kretzke, would contact the persons hereinafter mentioned that were charged with violating the laws of the United States, or were about to be charged with the violation of the laws of the United States, or who believed that they were about to be charged with violation of the laws of the United States, and inform them that for a certain sum of money paid by the said persons referred to as aforesaid, they would make certain arrangements with the said Daniel D. Glasser to the end that the said charges made or to be made against said person or persons charged, to be charged, or who believed that they were to be charged with violating the laws of the United States, would not be made or brought against them by the United States;

35. That the said Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, and Norton I. Kretzke, would contact certain persons hereinafter named, and would inform them that they were to be charged with the violation of the criminal laws of the United States, and they and
25 each of them would solicit from said persons certain sums of money which they would promise said persons would be paid to Daniel D. Glasser to influence him in his official capacity in his decisions and actions on the certain questions, matters, causes, and proceedings which were brought or to be brought against the said persons, that is to say, it was part of said conspiracy that the said Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, and Norton I. Kretzke, would contact said persons and tell them that for a certain sum of money paid to them they would arrange with the said Daniel D. Glasser that he, Glasser, do certain acts in violation of his, the said Daniel D. Glasser's lawful duty as an Assistant United States Attorney, and they would promise said persons that

they, said persons, would be held harmless from prosecution;

36. That the persons whose names appear in paragraph 12 of this indictment are the persons referred to in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 33, 34, and 35 of this indictment as "certain persons hereinafter referred to," which said paragraph 12 is incorporated in the paragraphs mentioned immediately aforesaid by specific reference hereto, the same as if said names appeared therein;

37. That the said defendant, Daniel D. Glasser, would contact, meet, and hold conversation with the defendants and inform them from time to time what they and each of them should do to carry out said conspiracy; that said defendant, Daniel D. Glasser, would inform the defendants from time to time the amount of evidence it, the Govern-
26 ment of the United States, did have in its possession to establish the guilt of the persons charged or to be charged with violating the criminal laws of the United States; that the defendant, Daniel D. Glasser, would contact the defendants and instruct them how to proceed in disposing of certain matters concerning the persons named in paragraph 12 of this indictment who were solicited to pay money to the defendants and who did pay money to the defendants; that the said Daniel D. Glasser would contact the said defendants and inform them from time to time what steps he would take or what act or acts he intended to perform in disposing of the charges pending against the persons described in paragraph 12 of this indictment; that said defendant, Daniel D. Glasser, would contact said defendants from time to time and inform them in advance what he intended to say or do upon his various appearances in court in cases involving the persons named in paragraph 12 of this indictment; that said defendant, Daniel D. Glasser, would contact said defendants from time to time and inform them how and in what manner he intended to dispose of certain complaints and indictments against the persons named in paragraph 12 of this indictment; that the said defendant, Daniel D. Glasser, would from time to time confer with Alfred E. Roth and agree with said Alfred E. Roth that steps or action each of them would take in court; that said Glasser and Roth would from time to time agree between themselves what motion or motions each would make before the various District Judges before whom certain of the persons mentioned in paragraph 12 of this

indictment would appear from time to time to answer certain indictments pending against them; that Alfred E. Roth would from time to time inform the said Glasser what action the said Norton I. Kretzke was taking from time to time and who he, the said Norton I. Kretzke, was contacting; that the said Daniel D. Glasser was to inform the said Alfred E. Roth from time to time about said matters that he was representing the United States Government in, to the end that the said Alfred E. Roth would keep the said Kretzke duly advised; that the said Daniel D. Glasser was to hold conversation with the said Anthony Horton, otherwise known as Tony Horton, for the purpose of advising the said Anthony Horton of the activities of the investigators and special investigators of the Alcohol Tax Unit so that the said Anthony Horton could convey said information to the said Norton I. Kretzke; that the said Daniel D. Glasser was to hold conversation with the said Anthony Horton, otherwise known as Tony Horton, and advise the said Anthony Horton regarding certain persons about to be arrested by the agents of the Alcohol Tax Unit to the end that said Anthony Horton and Norton I. Kretzke could contact said persons; that the said Glasser was to hold conversation with the said Louis Kaplan and advise him regarding certain matters that he was preparing to present to the United States Grand Jury;

38. That said Norton I. Kretzke was to maintain a certain office in the City of Chicago where various persons charged with violation of the Alcohol Tax Laws could go to and come from, from time to time, and hold conversation, and that said office was well known to each of the defendants and a large number of persons who were during the time covered by this indictment engaged in violating the
 28 Alcohol Tax Laws of the United States; that said Norton I. Kretzke was to accept and take money from these persons for and on behalf of the defendants for the purpose of carrying out this conspiracy and to remain away from the United States Court House at Chicago where said matters were pending; that said Norton I. Kretzke was to employ Alfred E. Roth, well known to the defendants, to represent said prospective offenders of the Alcohol Tax Laws that were to be complained against or that were complained against by the United States or indicted by the United States; that said Alfred E. Roth was to appear for said persons from time to time as their lawyer and

from time to time defend said persons against the charges made against them by the United States;

39. That the said conspiracy was further to be accomplished in the following manner; that the defendants would conceal such transactions and acts as aforesaid and would do such other and further acts as they might deem necessary and advisable to prevent the disclosure of the existence of said conspiracy, and would destroy records, files, books, papers, documents, court records, office records, cards, and indexes, and would counsel with one another to destroy any document or record which might in any way evidence the existence of said conspiracy, and any transaction in furtherance thereof, and would attempt to obtain the suppression of any and all information and evidence of the acts made and done in furtherance of said conspiracy;

29 And the grand jurors aforesaid, upon their oaths aforesaid, do further present and charge that said defendants and co-conspirators at the several times and places hereinafter mentioned, during the continuance of the conspiracy, did commit and do the following and other overt acts to effect the objects and purposes of said unlawful and felonious conspiracy, combination and agreement as to the means, manner, and method of carrying out the same, that is to say:

OVERT ACTS.

1. From, to wit, June 1, 1935, to, to wit, April 15, 1937, at the City of Chicago, State of Illinois, Daniel D. Glasser and Norton I. Kretzke did occupy a certain room in the office of the United States Attorney for the Northern District of Illinois.

2. During the period from, to wit, June 1, 1935, to, to wit, April 15, 1937, at the City of Chicago, State of Illinois, Daniel D. Glasser and Norton I. Kretzke held a number of conversations.

3. On, to wit, November 15, 1937, at 175 West Jackson Boulevard, Chicago, Illinois, Victor Raubunas, Edward R. Dewes, and Anthony Horton met.

4. On, to wit, November 15, 1937, at 175 West Jackson Boulevard, Chicago, Illinois, Victor Raubunas, Edward R. Dewes and Anthony Horton held a conversation.

30 5. On, to wit, November 15, 1937, Norton I. Kretzke, Anthony Horton, Victor Raubunas, and Edward R.

Dewes met in the office of Norton I. Kretzke at 7 South Dearborn Street, Chicago, Illinois.

6. On, to wit, November 15, 1937, Norton I. Kretzke, Anthony Horton, Victor Raubunas and Edward R. Dewes held a conversation in the office of Norton I. Kretzke at 7 South Dearborn Street, Chicago, Illinois.

7. On, to wit, November 20, 1937, at Chicago, Illinois, Anthony Horton and Victor Raubunas held a telephone conversation.

8. On, to wit, November 15, 1937, at 7 South Dearborn Street, Chicago, Illinois, in the office of Norton I. Kretzke, Victor Raubunas paid to Norton I. Kretzke the sum of, to wit, \$300.00.

9. On, to wit, November 20, 1937, at Chicago, Illinois, Anthony Horton and Victor Raubunas held a conversation.

10. On, to wit, November 20, 1937, at Chicago, Illinois, Victor Raubunas paid to Anthony Horton, at the residence of Anthony Horton, the sum of, to wit, \$100.00.

11. On, to wit, November 15, 1938, at 7 South Dearborn Street, Chicago, Illinois, Norton I. Kretzke and Victor Raubunas met and held a conversation.

12. On, to wit, July 1, 1936, at 6557 South Western Avenue, Chicago, Illinois, Louis Kaplan, Victor Raubunas, and Ralph Sharp met.

31 13. On, to wit, July 1936, at 6557 South Western Avenue, Chicago, Illinois, Louis Kaplan, Victor Raubunas, and Ralph Sharp held a conversation.

14. On, to wit, August 30, 1936, at Chicago, Illinois, Victor Raubunas and Louis Kaplan met and held a conversation, at which time Victor Raubunas paid to Louis Kaplan the sum of, to wit, \$500.00.

15. On, to wit, September 7, 1937, at Chicago, Illinois, in a certain room in the United States Court House wherein the grand jury was sitting, Daniel D. Glasser did appear before said grand jury and present to said grand jury certain facts concerning a violation of the alcohol tax laws, namely, certain facts concerning the seizure of a certain unregistered still found and seized at 2524-34 Western Avenue, Chicago, Illinois.

16. On, to wit, April 15, 1938, at Chicago, Illinois, Victor Raubunas paid to Louis Kaplan the sum of, to wit, \$500.00.

17. On, to wit, January 19, 1937, at Chicago, Illinois, Ralph Sharp and Louis Kaplan met.

18. On, to wit, January 19, 1937, at Chicago, Illinois, Ralph Sharp and Louis Kaplan held a conversation.

19. On, to wit, February 10, 1937, at or near LaSalle Street and Jackson Boulevard, Chicago, Illinois, Victor Raubunas, Louis Kaplan, Anthony Horton, and Ralph Sharp met and held a conversation.

20. On, to wit, February 15, 1937, at Chicago, Illinois, Norton I. Kretzke and Daniel D. Glasser and Ralph Sharp appeared before the United States Commissioner, Edward K. Walker, in the United States Court House at Chicago, Illinois.

21. On, to wit, February 15, 1937, at Kedzie and Ogden Avenues in the City of Chicago, State of Illinois, Ralph Sharp and Louis Kaplan met and held a conversation.

22. On, to wit, December 10, 1938, in Room 857 in the United States Court House, Chicago, Illinois, Daniel D. Glasser and Paul Svec met and held a conversation.

23. On, to wit, August 15, 1937, at the United States Court House, Chicago, Illinois, Paul Svec and Anthony Horton met.

24. On, to wit, August 15, 1937, at or near the United States Court House, Chicago, Illinois, Paul Svec and Anthony Horton were together in a certain automobile.

25. On, to wit, August 15, 1937, at Chicago, Illinois, at or near a place on Maxwell Street in the city aforesaid, Paul Svec, Anthony Horton and Norton I. Kretzke met and held a conversation.

26. On, to wit, June 1, 1937, at or near May and Polk Streets, in the City of Chicago, Illinois, Daniel D. Glasser and one Albert Yario, alias Sheeny Albert, met and held a conversation.

27. On, to wit, May 15, 1937, before the May grand Jury then sitting, in a room in the United States Court House, Daniel D. Glasser did appear and question a certain witness named Joseph Cole.

28. On, to wit, January 22, 1937, at 7 South Dearborn Street, Chicago, Illinois, Frank Hodorowicz and Norton I. Kretzke met.

29. On, to wit, January 22, 1937, at 7 South Dearborn Street, Chicago, Illinois, Frank Hodorowicz and Norton I. Kretzke held a conversation.

30. On, to wit, January 27, 1937, at 7 South Dearborn Street, Chicago, Illinois, Frank Hodorowicz and Norton I. Kretzke met and held a conversation.

31. On, to wit, September 15, 1937, at 7 South Dearborn Street, Chicago, Illinois, Frank Hodorowicz and Norton I. Kretzke met and held a conversation.

32. On, to wit, January 27, 1937, at 7 South Dearborn Street, Chicago, Illinois, Frank Hodorowicz and Norton I. Kretzke met and held a conversation, at which time Frank Hodorowicz paid to Norton I. Kretzke the sum of \$800.00.

33. On, to wit, September 22, 1937, at 7 South Dearborn Street, Chicago, Illinois, Frank Hodorowicz and Norton I. Kretzke met and held a conversation, at which time Frank Hodorowicz paid to Norton I. Kretzke the sum of \$800.00.

34. On, to wit, December 31, 1937, at 11823 South Michigan Avenue, Chicago, Illinois, Elmer Swanson, Frank Hodorowicz, Christ Del Rocco, and Norton I. Kretzke met and held a conversation.

35. From, to wit, January 1, 1937, until, to wit, June 1, 1939, Daniel D. Glasser, from time to time, in the United States Court House and in room 857 of the United States Attorney's office, met and held conversations with Anthony Horton.

34 36. On, to wit, December 31, 1937, at 11823 South Michigan Avenue, Chicago, Illinois, Elmer Swanson, Frank Hodorowicz, Christ Del Rocco, and Norton I. Kretzke met and held a conversation, at which time Frank Hodorowicz paid to Norton I. Kretzke the sum of, to wit, \$500.00.

37. On, to wit, January 25, 1938, at 7 South Dearborn Street, Chicago, Illinois, Anthony Horton, Christ Del Rocco, Elmer Swanson, Frank Hodorowicz, met in the office of Norton I. Kretzke and held a conversation.

38. On, to wit, January 25, 1938, at Chicago, Illinois, Anthony Horton, Christ Del Rocco, Elmer Swanson, and Frank Hodorowicz met in the office of Alfred E. Roth and held a conversation with Alfred E. Roth.

39. On, to wit, June 1, 1938, at Chicago, Illinois, in the home of Frank Hodorowicz, Frank Hodorowicz and Norton I. Kretzke met and held a conversation.

40. On, to wit, June 11, 1938, in the United States Court House at Chicago, Illinois, Frank Hodorowicz and Anthony Horton met and held a conversation.

41. On, to wit, June 15, 1938, at Chicago, Illinois, in the office of Norton I. Kretzke located at 7 South Dearborn Street, Frank Hodorowicz, Mike Hodorowicz, Peter Hodorowicz, and Clem Dowiat met and held a conversation, at

which time Frank Hodorowicz paid to Norton I. Kretzke the sum of, to wit, \$200.00.

42. On, to wit, July 15, 1938, at Room 857 in the United States Court House, at Chicago, Illinois, Frank Hodorowicz and Daniel D. Glasser met and held a conversation.

35 43. On, to wit, July 20, 1938, at Room 857 in the United States Court House, at Chicago, Illinois, Mike Hodorowicz and Daniel D. Glasser met and held a conversation.

44. Between, to wit, January 1, 1938 and June 1, 1938, at or near Kedzie and Ogden Avenues, Chicago, Illinois, Norton I. Kretzke, Daniel D. Glasser, and Louis Kaplan met and held a conversation.

45. Between, to wit, January 1, 1938 and June 1, 1938, at or near Kedzie Avenue and Douglas Boulevard, Chicago, Illinois, Norton I. Kretzke, Daniel D. Glasser, and Louis Kaplan met and held a conversation.

46. On, to wit, March 29, 1938, in the court room of U. S. District Judge, Charles E. Woodward, in the United States Court House, at Chicago, Illinois, Daniel D. Glasser and Alfred E. Roth met and held a conversation, and said Daniel D. Glasser, on behalf of the United States, made a certain motion to continue generally a cause of the United States versus Anthony Hodorowicz, Clemens Dowiat and Carl Swanson.

47. On, to wit, April 28, 1938, in the court room of U. S. District Judge, Charles E. Woodward, in the United States Court House, at Chicago, Illinois, Daniel D. Glasser and Alfred E. Roth met and held a conversation, at which time Daniel D. Glasser, on behalf of the United States, made a certain motion to strike the case of United States versus Anthony Hodorowicz, Clemens Dowiat and Carl Swanson from the docket with leave to reinstate.

36 48. On, to wit, January 28, 1938, in Room 857 of the United States Court House, at Chicago, Illinois, Mae Jorkas and Daniel D. Glasser met.

49. On, to wit, January 28, 1938, in Room 857 of the United States Court House, at Chicago, Illinois, Mae Jorkas and Daniel D. Glasser held a conversation.

50. On, to wit, July 10, 1939, at Fort Wayne, Indiana, Norton I. Kretzke, Alfred E. Roth, and Alexander Campbell met.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

1. That at all times covered by this indictment, subsequent to, to wit, March 15, 1935, the defendant hereinafter named, Daniel D. Glasser, was an Assistant United States Attorney for the Northern District of Illinois, employed under the provisions of the United States statute in such case made and provided to assist the United States Attorney to prosecute in his district all delinquents for crimes and offenses cognizable under the authority of the United States at Chicago, Illinois, and as such Assistant United States Attorney he did, at all times covered by this indictment, from time to time, in certain United States court rooms, United States Grand Jury rooms, and United States Commissioners' rooms, and in the office of the United States Attorney at Chicago, and at other places in the aforesaid district, act for and on behalf of the United States in certain official functions under and by authority of the Department of Justice of the United States, and as such officer of the United States, he did, at all times covered by this indictment, have certain decisions to make and actions to take on certain questions, matters, causes and proceedings which were from time to time pending and which were from time to time brought before him in his capacity as such official in the performance of his duties as such Assistant United States Attorney, that is to say, the said Daniel D. Glasser was required to perform certain
38 duties for and on behalf of the United States as Assistant United States Attorney in prosecuting various persons who were from time to time charged with committing certain offenses against the laws of the United States, namely, to wit, the offenses of unlawfully possessing a still set up not registered as required by law; with carrying on the business of a distillery and wilfully and feloniously failing to pay taxes on spirits distilled; with carrying on the business of a wholesale liquor dealer and wilfully failing to pay the special tax required by law; with carrying on the business of a distiller and wilfully failing to display the sign "registered distillery" as required by law; with carrying on the business of a distiller without having given the bond required by law; with having made and fermented a mash fit for distillation in a building other

than a duly qualified registered distillery; with having unlawfully removed and concealed goods and commodities on which a tax was imposed with intent to defraud the United States of such tax; with unlawful possession of distilled spirits, the containers of which did not have affixed stamps required by law to denote payment of the internal revenue taxes imposed thereon; which offenses are more clearly defined and set forth under Title 26 of the United States Code of Laws;

2. That part of the time covered by this indictment, namely, from, to wit, March 15, 1935, to, to wit, April 15, 1937, Norton I. Kretzke was an Assistant United States Attorney for the Northern District of Illinois employed under the provisions of the United States statute in such case made and provided to assist the United States Attorney to prosecute in his district all delinquents for crimes and
39 offenses cognizable under the authority of the United States at Chicago, Illinois, and as such Assistant United States Attorney he did, from time to time, in certain United States court rooms and United States Grand Jury rooms, and United States Commissioners' rooms, and in the office of the United States Attorney at Chicago, and at other places in the aforesaid district, act for and on behalf of the United States in certain official functions under and by authority of the Department of Justice of the United States, and as such officer of the United States he did have certain decisions to make and actions to take on certain questions, matters, causes, and proceedings which were from time to time pending and which were from time to time brought before him in his capacity as such official in the performance of his duties as such Assistant United States Attorney, that is to say, the said Norton I. Kretzke was required to perform certain duties for and on behalf of the United States as Assistant United States Attorney in prosecuting various persons who were from time to time charged with committing certain offenses against the laws of the United States, namely, to wit, the offenses of unlawfully possessing a still set up not registered as required by law; with carrying on the business of a distillery and wilfully and feloniously failing to pay taxes on spirits distilled; with carrying on the business of a wholesale liquor dealer and wilfully failing to pay the special tax required by law; with carrying on the business of a distiller and wilfully failing to display the sign "registered distillery"

as required by law; with carrying on the business of a distiller without having given the bond required by law; with having made and fermented a mash fit for distillation in a building other than a duly qualified registered distillery; with having unlawfully removed and concealed goods and commodities on which a tax was imposed with intent to defraud the United States of such tax; with unlawful possession of distilled spirits, the containers of which did not have affixed stamps required by law to denote payment of the internal revenue taxes imposed thereon; which offenses are more clearly defined and set forth under Title 26 of the United States Code of Laws;

3. That at certain times covered by this indictment, subsequent to, to wit, March 15, 1935, the defendant hereinafter named, Louis Kaplan, well known to the defendants, was a person committing certain offenses against the United States, namely, offenses against the alcohol tax laws, and was a person associating himself with certain persons well known to the defendants to be offenders against the laws of the United States, that is, the Alcohol Tax Laws;

4. That at all times covered by this indictment, subsequent to, to wit, March 15, 1935, the defendant hereinafter named, Alfred E. Roth, was an attorney at law, well known to the defendants, and was duly licensed to practice law in the courts of the United States;

5. That at all times covered by this indictment, subsequent to, to wit, March 15, 1935, the United States did maintain a certain governmental agency known as the Alcohol Tax Unit, a unit of the Bureau of Internal Revenue in the Treasury Department of the United States;

41 6. That at all times covered by this indictment, subsequent to the date aforesaid, the duties of the Alcohol Tax Unit, well known to the defendants, were to enforce the Treasury rules and regulations governing the production and distribution of alcohol and to supervise the various distilleries and breweries that operate under government supervision, and to enforce the laws pertaining to the traffic in non-tax-paying alcohol;

7. That at all times covered by this indictment subsequent to the date aforesaid, the Alcohol Tax Unit, well known to the defendants aforesaid, to carry out the governmental function aforesaid, did employ and maintain a certain staff of special investigators and investigators, to

wit, one hundred and fifty men who performed the duties of investigating violations of the Alcohol Tax Laws and making arrests therefor, and that during the time aforesaid the said investigators would from time to time visit the office of the United States Attorney for the purpose of securing authorization from the said United States Attorney to file criminal complaints against certain persons arrested for Alcohol Tax Law violations;

8. That it was the lawful duty of said defendants, Daniel D. Glasser and Norton I. Kretzke, well known to the defendants, as Assistant United States Attorneys acting for and on behalf of the United States, to prosecute offenders of the Alcohol Tax Laws, that is to say, it was the lawful duty, well known to the defendants, of the said Daniel D. Glasser and Norton I. Kretzke to hear and re-
42 view certain facts presented to them from time to time by said investigators representing the aforesaid governmental agency and to make decisions and take action thereon to the end that said investigators would know whether or not said offenders were guilty in law as well as fact and that they would be so prosecuted by the United States, that is to say, whether or not certain complaints would be authorized to be filed against them upon which warrants would issue for their arrest;

9. That at times covered by this indictment subsequent to, to wit, March 15, 1935, it was the lawful duty of said defendants, Daniel D. Glasser and Norton I. Kretzke, which duty was well known to the defendants, as Assistant United States Attorneys acting for and on behalf of the United States, to appear before the various United States Grand Juries summoned to hear questions, matters, and causes, and to vote indictments and present to them, the members of said Grand Juries, certain facts furnished to them by said investigators indicating or failing to indicate that certain persons had offended against the laws of the United States, particularly the Alcohol Tax Laws, and as a consequence thereof were guilty or not guilty of certain felonies, and that said defendants well knew that the said Daniel D. Glasser and the said Norton I. Kretzke, in the performance of their lawful duty or duties, did, from time to time, appear before said United States Grand Juries for the purpose of presenting to them, the members of the said
Grand Juries, certain facts;

43 10. That on, to wit, April 15, 1937, the said defendant, Norton I. Kretzke, resigned as an Assistant

United States Attorney, a fact well known to the defendants, and subsequently thereto, down to and including the date of this indictment, said defendant held no official position with the Government of the United States;

11. That at all times covered by this indictment subsequent to, to wit, March 15, 1935, the defendant herein-after named, Anthony Horton, commonly known as Tony Horton, well known to the defendants, was a professional bondsman who, during all the time covered by this indictment, did from time to time in the district aforesaid secure and provide certain sureties for various persons required to give bond to answer to criminal charges brought against them by the Government of the United States;

12. That, well known to the defendants, at certain times covered by this indictment subsequent to, to wit, March 15, 1935, the following persons, Frank Hodorowicz, Peter Hodorowicz, Mike Hodorowicz, Anthony Hodorowicz, Walter Haleban, also known as Walter Hort, Clem Dowiat, Elmer Swanson, Christ del Rocco, Walter Kwiatkowski, Edward R. Dewes, Victor Raubunas, Edward Farber, Louis Pregonzei, Lincoln Rankin, Ralph Sharp, alias Ralph Bogush, William Wroblewski, Edward Wroblewski, Paul Svec, Stanley Wasielawski, Stanley Slessur, otherwise known as Stanley Slasuraitis, Louis Kaplan,

and Adam Widzes, and many other persons to the
44 grand jurors unknown, were arrested by officers of the United States and charged with unlawfully violating certain laws of the United States, namely, to wit, certain provisions of Title 26 of the United States Code, that is to say, the aforesaid persons were, subsequent to the date immediately aforesaid, arrested and charged with unlawfully possessing a still set up not registered as required by law; of carrying on the business of a distillery and wilfully and feloniously failing to pay taxes on spirits distilled; of carrying on the business of a wholesale liquor dealer and wilfully failing to pay the special tax required by law; of carrying on the business of a distiller and wilfully failing to display the sign "registered distillery" as required by law; of carrying on the business of a distiller without having given the bond required by law; of having made and fermented a mash fit for distillation in a building other than a duly qualified registered distillery; of having unlawfully removed and concealed goods and commodities on which a tax was imposed with in-

tent to defraud the United States of such tax; of unlawful possession and transportation of distilled spirits, the containers of which did not have affixed stamps required by law to denote payment of the internal revenue taxes imposed thereon;

13. That subsequent to the arrest of the above persons they were given various hearings before the United States Commissioner on certain complaints filed there, and before certain District Judges on certain indictments
45 pending there, and it was necessary for said persons from time to time to appear before said Commissioner and District Judges, that is to say, that said Peter Hodorowicz and Walter Hort did appear before said United States Commissioner; that is to say, the said Anthony Hodorowicz, Clem Dowiat, and Elmer Swanson did appear before said Commissioner and before District Judge Charles E. Woodward; that is to say, the said Walter Kwiatkowski did appear before said United States Commissioner; that is to say, the said Edward R. Dewes, Victor Raubunas, Edward Farber and Ralph Sharp, did have certain matters of and concerning themselves presented to the Grand Jury; that is to say, Louis Kaplan and Adam Widzes did have certain matters of and concerning themselves presented to the Grand Jury; that is to say, the said Edward Dewes, Victor Raubunas, Edward Farber, Louis Pregonzei, Lincoln Rankin and Ralph Sharp did have certain true bills returned against them by the Grand Jury; that is to say, Edward Dewes, Victor Raubunas, Edward Farber, Louis Pregonzel, Lincoln Rankin, Ralph Sharp, alias Ralph Bogush, did appear before District Judge James H. Wilkerson to be arraigned on a certain indictment returned by the United States Grand Jury; that is to say, one Paul Svec did appear before the said United States Commissioner, and before the said United States District Judge to answer to a complaint and afterward to an indictment; that is to say, one William Wroblewski and Edward Wroblewski and Stanley Wasielawski did have presented to a
46 United States Grand Jury certain matters of and concerning themselves upon which a true bill was returned and upon which they did later appear before a District Judge; that is to say, one Elmer Swanson and one Christ Del Rocco did appear before the said United States Commissioner; all of which was well known to the defendants;

14. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the defendants:

Daniel D. Glasser,

Norton I. Kretzke,

Anthony Horton, otherwise known as Tony Horton,

Louis Kaplan, and

Alfred E. Roth,

well knowing the premises aforesaid, in the City of Chicago, in the State and District aforesaid, and at other places to the said grand jurors unknown, heretofore, on, to wit, March 15, 1935, and thereafter continuously up to the date of the return of this indictment, in violation of the provisions of Section 88, Title 18, of the United States Code of Laws, did wilfully, unlawfully, and feloniously conspire, combine, confederate, and agree together, and with each other, and with divers other persons to the grand jurors unknown, to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by a United States Attorney or an Assistant United States Attorney to prosecute certain delinquents for crimes and offenses cognizable under the authority of the United States as the same should be

presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud, more particularly its right to a conscientious, faithful and honest representation of its interests in certain suits, controversies, proceedings, matters, actions, and causes brought and pending in the United States Courts in the Northern District of Illinois; that is to say, by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function, under and by authority of a department and office of the Government of the United States, with intent to influence his decision and action on certain questions, (matters, causes, and proceedings which were at times pending, and which were by law brought before such officer or officers in his or their official capacity, and with the intent to influence such officer or officers to commit and aid in committing, and to collude in committing certain frauds on the United States, and to induce such officer or officers to do and to omit from doing certain acts in violation of his or their lawful duty;

15. That the conspiracy, combination, confederation, and agreement aforesaid was to be accomplished in the manner and means following, that is to say, that they, the said defendants, would solicit certain persons hereinafter referred to, charged with violating or about to be charged with violating the laws of the United States, to promise or cause to promise certain sums of money to be paid or pledged to the defendants herein to be used to influence and corrupt said defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity
48 in their decisions and actions on certain questions, matters, causes, and proceedings which were at a certain time or times covered by this indictment by law brought before said Daniel D. Glasser and Norton I. Kretzke in their official capacity for their decision and action;

16. That they, the defendants, would solicit the certain persons hereinafter referred to, to offer certain sums of money to be paid to the defendants with the intent and purpose that they, the said defendants, would accept and use said money to corruptly, wrongfully, and improperly influence said defendants, Daniel D. Glasser and Norton I. Kretzke, in their decision or decisions and action or actions on certain questions, matters, causes, and proceedings which were by law brought before them, the said defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity for their decision and action;

17. That they, the defendants, would solicit the certain persons hereinafter referred to, to offer certain sums of money to be paid to the defendants with the intent and purpose that they, the said defendants, would accept and use said money to corruptly, wrongfully, and improperly influence the said Daniel D. Glasser and Norton I. Kretzke, defendants, to dishonestly and wrongfully, and in violation of their lawful duty, aid the defendants in committing a certain fraud on the United States;

18. That the defendants would solicit the certain persons hereinafter referred to, charged or to be charged by the United States with violating the criminal laws of the United States, to promise, offer to promise, and pro-
49 cure to be promised, certain sums of money to the defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity, to be used by the defendants to corruptly and wrongfully influence the said Daniel D.

Glasser and Norton I. Kretzke to collude in a fraud on the United States;

19. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity aforesaid, with the intent to corruptly, wrongfully and improperly influence the said Daniel D. Glasser and Norton I. Kretzke to allow a fraud to be committed on the United States;

20. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity aforesaid, with the intent to corruptly, wrongfully and improperly influence the said Daniel D. Glasser and Norton I. Kretzke in their official capacity to dishonestly, wrongfully, and unlawfully make opportunity for the commission of a fraud on the United States;

21. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity aforesaid, with the intent to use said money to corruptly, wrongfully, and improperly induce the
50 said Daniel D. Glasser and Norton I. Kretzke to do certain acts in violation of their lawful duties as Assistant United States Attorneys;

22. That the defendants would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity, with the intent to use said money to corruptly, wrongfully, and improperly induce said Daniel D. Glasser and Norton I. Kretzke in their official capacity to omit to do certain acts, in violation of their lawful duty as Assistant United States Attorneys;

23. That the defendants, as part of said conspiracy, would solicit from the certain persons hereinafter referred to, who were charged or to be charged with violating the criminal laws of the United States, certain sums of money, that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence the said Daniel D. Glasser to dis-

honestly, wrongfully, and unlawfully collude in a fraud on the United States;

24. That the defendants, as part of said conspiracy, would solicit from the certain persons hereinafter referred to, certain sums of money, that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence said Daniel D. Glasser to allow a fraud to be committed on the United States;

51 25. That the defendants, as part of said conspiracy, would solicit from the certain persons hereinafter referred to certain sums of money that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence said Daniel D. Glasser to dishonestly, wrongfully, and unlawfully make opportunity for the commission of a fraud on the United States;

26. That the defendants, as part of said conspiracy, would solicit from certain persons hereinafter referred to, who were charged or about to be charged with violating the criminal laws of the United States, certain sums of money that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly induce said Daniel D. Glasser to dishonestly, fraudulently, and unlawfully do certain acts in violation of his lawful duty as Assistant United States Attorney;

27. That the defendants, as part of said conspiracy, would solicit from the certain persons hereinafter referred to, certain sums of money that were to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity, with the intent to corruptly, wrongfully, and improperly induce said Daniel D. Glasser to omit to do certain act or acts in violation of his lawful duty as an Assistant United States Attorney;

28. That the said defendants would contact certain persons against whom certain criminal complaints were authorized to be filed before the United States Commissioner by the said Daniel D. Glasser and Norton I.

52 Kretzke, acting in their respective official capacities, while and at the time said complaints were so pending and to be heard by the said Commissioner, and solicit from said persons certain sums of money; and they, the

defendants, would at the time of said solicitation inform said persons that if they, the said persons, would pay to them, the said defendants, certain sums of money, they, the said defendants, would use the same to corruptly and wrongfully induce and persuade the said defendants, Daniel D. Glasser and Norton I. Kretzke, to unfaithfully discharge their duties toward the United States as Assistant United States Attorneys, and that they, the defendants, would be found not guilty and discharged;

29. That the said defendants would solicit from certain persons living and residing in the district aforesaid, who were well known to the defendants and who were under the belief that the United States was about to charge them with a violation of its laws, namely, the Alcohol Tax Laws, certain sums of money that they, the defendants, were to promise to be paid to the said Daniel D. Glasser and Norton I. Kretzke in their official capacities to corruptly and wrongfully induce the said Daniel D. Glasser and Norton I. Kretzke to make their decision so that they, the said persons, would not be charged with a violation of the laws of the United States;

30. That said defendants would solicit from certain persons, some of whom are hereinafter named, who had been arrested and charged with violating the laws of the United States and who were awaiting a hearing on said charges before the United States Commissioner, certain sums of money that were to be promised to be paid to the defendants, Daniel D. Glasser and Norton I. Kretzke, in their official capacity, to cause them, the said Daniel D. Glasser and Norton I. Kretzke, to unlawfully commit a fraud on the United States by going before said United States Commissioner and making a certain legal motion to dismiss said charges;

31. That said defendants would solicit the persons hereinafter referred to, who were after hearing ordered by the said Commissioner to be held to the District Court to await the action of the Grand Jury, and inform said person or persons or anyone acting for or on their behalf that the said Daniel D. Glasser in his official capacity was about to appear before a Grand Jury and present to it certain facts that would result in their being indicted and that if they, the said persons hereinafter referred to, would promise to pay to the defendants a certain sum of money or sums of money, they, the defendants, would corruptly induce the said Daniel D. Glasser to so conduct

said grand jury hearing and so present said facts that the grand jury members would be improperly advised of the facts and evidence the United States had secured against them, and if the said persons hereinafter referred to would promise to pay to said defendants certain sums of money, they, the said defendants, would induce the said Daniel D. Glasser to withhold from the Grand Jury certain facts establishing their connection with the alleged offense which said grand jury was inquiring about, and as a result of said failure on the part of the defendant, Daniel D. Glasser, to properly perform his lawful duty, the Grand Jury would not have before it sufficient
54 facts to legally warrant their returning a true bill against said persons and they would be compelled to return a no bill;

32. That said defendants were from time to time covered by this indictment to contact the defendant, Daniel D. Glasser, and ascertain from Daniel D. Glasser the names and addresses of persons about to be arrested, complained against, or indicted for a violation of the Alcohol Tax Laws of the United States, and the said Daniel G. Glasser, in violation of his lawful duty, would give to said defendants the information they, the defendants, well knew was confidential, and after receiving said information the defendants would contact said persons and solicit from them certain sums of money to be used to influence said Daniel D. Glasser so that he would corruptly render his judgment and decision affecting the prosecution of said persons;

33. That the defendants, Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, Norton I. Kretzke, and Alfred E. Roth, would from time to time covered by this indictment, contact certain persons hereinafter named who were defendants in certain criminal proceedings wherein the United States was plaintiff and they, the said persons, were defendants, and inform said defendants that for certain sums of money paid to them they, the said defendants, would corruptly influence said defendant, Daniel D. Glasser, who did appear from time to time in the various court rooms before the various District Judges representing and acting for and on behalf of the United States in his official capacity in the causes and proceedings affecting the persons hereinafter named, to de-
55 lay, continue, and unduly prolong said proceedings to the end that the various witnesses called to testify in

said causes and proceedings would become discouraged and disheartened and would cease to have interest in said proceedings and would fail to remember the parties defendant or the part they took in said violation and as a result thereby the said trial and proceedings would be unduly delayed and a fraud would be committed on the United States;

34. That the said defendants, Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, and Norton I. Kretzke, would contact the persons hereinafter mentioned that were charged with violating the laws of the United States, or were about to be charged with the violation of the laws of the United States, or who believed that they were about to be charged with violation of the laws of the United States, and inform them that for a certain sum of money paid by the said persons referred to as aforesaid, they would make certain arrangements with the said Daniel D. Glasser to the end that the said charges made or to be made against said person or persons charged, to be charged, or who believed that they were to be charged with violating the laws of the United States, would not be made or brought against them by the United States;

35. That the said Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, and Norton I. Kretzke, would contact certain persons hereinafter named, and would inform them that they were to be charged with the violation of the criminal laws of the United States, and

they and each of them would solicit from said persons certain sums of money which they would promise said persons would be to Daniel D. Glasser to influence him in his official capacity in his decisions and actions on the certain questions, matters, causes, and proceedings which were brought or to be brought against the said persons, that is to say, it was part of said conspiracy that the said Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, and Norton I. Kretzke, would contact said persons and tell them that for a certain sum of money paid to them they would arrange with the said Daniel D. Glasser that he, Glasser, do certain acts in violation of his, the said Daniel D. Glasser's, lawful duty as an Assistant United States Attorney, and they would promise said persons that they, said persons, would be held harmless from prosecution;

36. That the persons whose names appear in paragraph 12 of this indictment are the persons referred to in para-

graphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 33, 34, and 35 of this indictment as "certain persons hereinafter referred to" which said paragraph 12 is incorporated in the paragraphs mentioned immediately aforesaid by specific reference hereto, the same as if said names appeared therein:

37. That the said defendant, Daniel D. Glasser, would contact, meet, and hold conversation with the defendants and inform them from time to time what they and each of them should do to carry out said conspiracy; that said defendant, Daniel D. Glasser, would inform the defendants from time to time the amount of evidence it, the Government of the United States, did have in its possession to establish the guilt of the persons charged or to be charged with violating the criminal laws of the United States; that the defendant, Daniel P. Glasser, would contact the defendants and instruct them how to proceed in disposing of certain matters concerning the persons named in paragraph 12 of this indictment who were solicited to pay money to the defendants and who did pay money to the defendants; that the said Daniel D. Glasser would contact the said defendants and inform them from time to time what steps he would take or what act or acts he intended to perform in disposing of the charges pending against the persons described in paragraph 12 of this indictment; that said defendant, Daniel D. Glasser, would contact said defendants from time to time and inform them in advance what he intended to say or do upon his various appearances in court in cases involving the persons named in paragraph 12 of this indictment; that said defendant, Daniel D. Glasser, would contact said defendants from time to time and inform them how and in what manner he intended to dispose of certain complaints and indictments against the persons named in paragraph 12 of this indictment; that the said defendant, Daniel D. Glasser, would from time to time confer with Alfred E. Roth and agree with said Alfred E. Roth what steps or action each of them would take in court; that said Glasser and Roth would from time to time agree between themselves what motion or motions each would make before the various District Judges before whom certain of the persons mentioned in paragraph 12 of this indictment would appear from time to time to answer certain indictments pending against them; that Alfred E. Roth would from time to time inform the said

Glasser what action the said Norton I. Kretzke was taking from time to time and who he, the said Norton
58 I. Kretzke, was contacting; that the said Daniel D.

Glasser was to inform the said Alfred E. Roth from time to time about said matters that he was representing the United States Government in, to the end that the said Alfred E. Roth would keep the said Kretzke duly advised; that the said Daniel D. Glasser was to hold conversation with the said Anthony Horton, otherwise known as Tony Horton, for the purpose of advising the said Anthony Horton of the activities of the investigators and special investigators of the Alcohol Tax Unit so that the said Anthony Horton could convey said information to the said Norton I. Kretzke; that the said Daniel D. Glasser was to hold conversation with the said Anthony Horton, otherwise known as Tony Horton, and advise the said Anthony Horton regarding certain persons about to be arrested by the agents of the Alcohol Tax Unit to the end that said Anthony Horton and Norton I. Kretzke could contact said persons; that the said Glasser was to hold conversation with the said Louis Kaplan and advise him regarding certain matters that he was preparing to present to the United States Grand Jury;

38. That said Norton I. Kretzke was to maintain a certain office in the City of Chicago where various persons charged with violation of the Alcohol Tax Laws could go to and come from, from time to time, and hold conversation, and that said office was well known to each of the defendants and a large number of persons who were
59 during the time covered by this indictment engaged in violating the Alcohol Tax Laws of the United States; that said Norton I. Kretzke was to accept and take money from these persons for and on behalf of the defendants for the purpose of carrying out this conspiracy and to remain away from the United States Court House at Chicago where said matters were pending; that said Norton I. Kretzke was to employ Alfred E. Roth, well known to the defendants, to represent said prospective offenders of the Alcohol Tax Laws that were to be complained against or that were complained against by the United States or indicted by the United States; that said Alfred E. Roth was to appear for said persons from time to time as their lawyer and from time to time defend said persons against the charges made against them by the United States;

39. That the said conspiracy was further to be accom-

plished in the following manner: That the defendants would conceal such transaction and acts as aforesaid and would do such other and further acts as they might deem necessary and advisable to prevent the disclosure of the existence of said conspiracy, and would destroy records, files, books, papers, documents, court records, office records, cards, and indexes, and would counsel with one another to destroy any document or record which might in any way evidence the existence of said conspiracy, and any transactions in furtherance thereof, and would attempt to obtain the suppression of any and all information and evidence of the acts made and done in furtherance of said conspiracy;

60 And the grand jurors aforesaid, upon their oaths aforesaid, do further present and charge that the said defendants and co-conspirators, at the several times and places hereinbefore mentioned in this indictment, during the continuance of the conspiracy, and to effect the objects and purposes of said unlawful and felonious conspiracy, combination and agreement, did commit certain overt acts, which said overt acts are set forth and described in the first count of this indictment and which said overt acts, Nos. 1 to 50, both inclusive, are incorporated herein by reference as though fully set forth, and are made a part hereof.

William J. Campbell,
United States Attorney.

UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

The United States of America,

vs.

Daniel D. Glasser, Norton I. Kretzke, Anthony Horton,
otherwise known as Tony Horton, Louis Kaplan, and
Alfred E. Roth.

Indictment.

Vic: Section 88, Title 18, United States Code.

(Conspiracy to violate Section 91, Title 18, United States
Code, and conspiracy to defraud the United States.)

A true bill,

George A. Hancock,
Foreman.

Filed in open court this 29th day of Sept., A. D. 1939.

Hoyt King,
Clerk.

2 And afterwards, to wit, on the 29th day of September A. D. 1939, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson District Judge appears the following entry, to wit:

3

UNITED STATES DISTRICT COURT,
Northern District of Illinois.

(Date) Sep 29, 39.

Cause No.

Title of Cause

Df. Ex. 1

11/7/39.

Brief Statement of Motion

The Grand Jury return 4 Indictments in open Court.

Added 10/30 39

Name of moving Counsel

Representing

Order discharging Grand Jury of Sept Term 1939.

Name of opposing Counsel (if any)

JHW

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

62 And afterwards, to wit, on the 12th day of October A. D. 1939, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge appears the following entry, to wit:

Entered 63
Oct. 12,
1939.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

Thursday, October 12, A. D. 1939.

Present: Honorable Philip L. Sullivan, Judge.

United States of America,	} No. 31825.
<i>vs.</i>	
Daniel D. Glasser, Norton I. Kret-	
ske, Alfred E. Roth, Anthony	
Horton, Louis Kaplan.	

On motion of defendants' attorneys It Is Ordered that leave be and the same is hereby given the defendants' to file any and all motions within twenty days from this date and it is

Ordered that this cause be and the same is hereby continued for pleas to November 3, A. D. 1939.

Entered 64
Oct. 31,
1939.

And afterwards, to wit, on the 31st day of October A. D. 1939, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge appears the following entry, to wit:

65 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

ORDER.

It appearing to the court that all the defendants in the above entitled cause have this day filed their motion to quash the indictment in the above cause:

It Is Hereby Ordered that the plaintiff herein, United States of America, plead, answer or demur to the said motion to quash the indictment in the above entitled cause within three days.

It Is Hereby Further Ordered that the filing of said motion to quash the indictment in the above entitled cause

be without prejudice to the rights of all the defendants in the above cause to file such further pleadings within such further time as shall be fixed by the court after a disposition of the said motion to quash the indictment.

Enter:

Philip L. Sullivan,

Dated October 31, 1939.

Judge.

86 And on, to wit, the 1st day of November, A. D. 1939, came the defendant by his attorneys and filed in the Clerk's office of said Court a certain APPEARANCE in words and figures following, to wit:

Filed
Nov. 1,
1939.

87 DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

I hereby enter the appearance of Daniel Glasser, defendant, and myself as his attorney in the above-entitled cause.

George F. Callaghan,

Defendant's Attorney.

Endorsed: District Court of the United States. * * (Caption—31825) * * Appearance. Filed Nov-1-1939. Hoyt King, Clerk. George F. Callaghan, Defendant's Attorney.

88 And on, to wit, the 2nd day of November, A. D. 1939, came the defendant by his attorneys and filed in the Clerk's office of said Court a certain APPEARANCE in words and figures following, to wit:

Filed
Nov. 2,
1939.

89 DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

We hereby enter the appearance of Norton I. Kretske, defendant, and ourselves as his attorney in the above-entitled cause.

Harrington & McDonnell,

Defendant's Attorney.

Endorsed: District Court of the United States. * * (Caption—31825) * * Appearance. Filed Nov-2-1939. Hoyt King, Clerk. Harrington & McDonnell, Defendant's Attorney.

Entered
Nov. 7,
1939.

90 And afterwards, to wit, on the 7th day of November, A. D. 1939, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

91 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—31825) * *

Tuesday, November 7, A. D. 1939.

Present: Honorable Patrick T. Stone, Judge.

This cause coming on to be heard on the defendants' motion to quash the indictment filed herein against them after arguments of counsel and due deliberation by the Court said motion is denied, to which ruling of the Court each defendant by his attorney duly excepts, it is

Ordered that the hearing on all motions and pleas be and the same is set for November 14, A. D. 1939, at 9:00 A. M.

Filed
Nov. 10,
1939.

92 And on, to wit, the 10th day of November, A. D. 1939, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Demurrers in words and figures following, to wit:

93 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—31825) * *

DEMURRER AS TO THE DEFENDANT, ALFRED E. ROTH.

Now comes the defendant, Alfred E. Roth, in his own proper person and, having read and considered the indictment herein, says that said indictment and each and every count thereof, separately and severally, and the matters and things, in substance and in manner and in form, as the same are herein alleged and set forth, are not sufficient in law to require this defendant to plead to said indictment or to answer the same, and that the said indictment is insufficient in law to sustain a judg-

ment against this defendant, for the following reasons, separately and severally considered:

1. The said indictment does not aver, nor does any count thereof, inform this defendant of the nature and cause of his accusation, with the certainty required by law.

2. The said indictment does not, nor does any count thereof, charge or aver the commission of acts by this defendant, constituting any offense against any statute of the United States with the certainty required by law.

3. The said indictment and each count thereof, is vague, indefinite and uncertain and, therefore, insufficient, for that the said indictment, or any count thereof, does not sufficiently aver or charge the elements or the supposed crime or offense therein attempted to be charged and it is impossible for this defendant to prepare a defense thereto.

4. Each count of the indictment charges the giving to and the taking by an officer of the United States, money for the purpose of influencing the official action and conduct of such officer and charges therefore the bribery of public officials and said crime or bribery requires for its commission concert of action by a plurality of agents. A conspiracy to commit said offense will not lie.

5. Each count of the indictment charges that the defendant, Glasser, agreed with himself, received from himself, and gave to himself, money in order to influence himself in his own official actions and the indictment fails therefore to charge an offense for that, the defendant could not join in a conspiracy to offer and give himself a bribe.

6. The indictment and each count thereof and, more particularly, Paragraph 14, which attempts to charge the conspiracy, does not name or designate the officer or officers mentioned therein and as to this essential element the defendants are uninformed.

7. The indictment and each count thereof and, more particularly, Paragraph 14, is vague, indefinite, uncertain and so wanting in particulars and specification as to subject the defendants to surprise, in that:

(a) No officer or officers are named or designated therein.

(b) The use of both the singular and plural interchangeably, to wit: "officer or officers", "persons", "his decision", "his or their official capacity", "his or their

lawful duty", leaves the defendants uninformed and confused as to who are the persons and officers attempted to be described therein and whether it is intended to describe one or several such persons and officers.

95 8. The said indictment is duplicitous in that it attempts to charge more than one conspiracy and in that it attempts to charge numerous substantive offenses.

9. The allegations of the indictment, and of each count thereof are so uncertain and indefinite that they violate the requirements of the Sixth Amendment to the Constitution of the United States of America.

10. Paragraphs 14 of each count, standing alone, and unaided by the allegations of the means to accomplish the conspiracy attempted to be described in said paragraphs do not charge any crime, in that:

(a) The said paragraphs do not allege and inform the defendants what the "questions, matters, causes, and proceedings" were concerning which the defendant conspired to influence the decision and action of the said officers and employees; or what the "certain frauds on the United States" were; nor do the said paragraphs describe the "certain acts" which the said officers and employees were "to do and to omit from doing" in violation of his or their official duty.

(b) The allegations in said paragraphs cannot be aided or amplified by the means alleged to have accomplished the said pretended conspiracy, as set forth in paragraphs 15 to 39, both inclusive, of each count of the indictment.

11. If the said paragraphs 14 of each count intend to charge, or can be interpreted to charge the defendants, Daniel D. Glasser and Norton I. Kretske, with being the officers and employees of the United States, whose judgment, decisions, and action in and on official questions, matters, questions, causes and proceedings were to be corruptly influenced as, and in the manner, described in said paragraphs 14, then and in that event the said paragraphs 14 do not charge a crime, in that the said defendants, Daniel D. Glasser and Norton I. Kretske, are accused of conspiring to promise, offer, cause and procure to be promised and offered to
96 themselves, Daniel D. Glasser, and Norton I. Kretske, money and other things of value, with intent to influence the decision and action, in official matters, of

themselves, the said Daniel D. Glasser and Norton I. Kretske.

12. The allegations of the indictment, and of each count thereof, are repugnant to each other, in that the grand jurors charge that the defendants conspired with each other, "and with other persons to the grand jurors unknown", yet the allegations of paragraph 12 of each count and the averments of certain overt acts described as having been committed in pursuance of the conspiracy indicate that the names of other conspirators were known to the grand jurors at the time they returned the indictment, to wit:

(a) Overt acts numbered 8, 10, 14 and 16 of each count show that Victor Raubunus was a conspirator and as such was known to the grand jurors at the time they returned this indictment.

(b) Overt acts numbered 32, 33, 36 and 41 of each count show that Frank Hodorowicz was a conspirator and as such was known to the grand jurors at the time they returned this indictment.

(c) Overt act numbered 41 of each count show that Mike Hodorowicz and Peter Hodorowicz were conspirators and as such were known to the grand jurors at the time they returned this indictment.

13. The allegations of paragraphs 14 of each count of the indictment and the averments of the means to accomplish the conspiracy, as set forth in paragraphs 15 to 39, both inclusive, of each count, are inconsistent, and repugnant to each other, in that paragraphs 14 charge a conspiracy to violate Section 91, Title 18 of the Criminal Code of the United States, and paragraphs 15 to 39, both inclusive, describe violations of other and different penal sections of the Criminal Code of the United States.

14. Paragraph 37 of each count of the indictment 97 alleges that the persons named in paragraph 12 of each count "did pay money to the defendants", which averment of "defendants" included the defendants, Daniel D. Glasser and Norton I. Kretske, officers and employees of the United States; that said allegations charge the crime of bribery of the said public officials and said crime required its commission by a plurality of persons and can only be charged as a substantive offense committed by the givers and receivers

of the bribe and the said persons or part of them cannot be charged with conspiracy.

15. Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 28, 29 and 30 of each count contain fatally inconsistent and repugnant allegations in that they charge that the defendants, which include Daniel D. Glasser and Norton I. Kretske, would solicit certain persons for money to pay to said Daniel D. Glasser to influence their official acts; in other words the said Glasser and Kretske are charged in said paragraphs with soliciting money to pay to themselves to corruptly influence and induce themselves to violate their official duties.

16. Paragraphs 23, 24, 25, 26, 27, 31 and 32 of each count contain fatally inconsistent and repugnant allegations in that they charge that the defendants, which include Daniel D. Glasser, would solicit certain persons for money to pay to said Daniel D. Glasser to influence his official acts; in other words the said Glasser is charged in said paragraphs with soliciting money to pay to himself to corruptly influence and induce himself to corruptly influence and induce himself to violate his official duties.

17. Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 34 and 35 of each count contain other fatally inconsistent and repugnant allegations in that they charge that the defendants which include Louis

Kaplan, would solicit from or contact "certain persons hereinafter referred to", which includes the said Louis Kaplan by the reference in paragraphs 12 and 36 of each count, for money to be paid to officers of the United States; in other words, the said defendant, Louis Kaplan, is charged with soliciting from himself and contacting himself, for money to be paid to officers of the United States.

18. Paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of each count contain remote, vague, indefinite and uncertain allegations in that they charge the defendants with soliciting certain persons for money to be paid or promised to be paid to officers of the United States, Daniel D. Glasser and Norton I. Kretske to influence or induce them or the other defendants, to commit "a certain fraud on the United States," to "collude in a fraud on the United States," "to allow a fraud to be committed on the United States", "to make opportunity for the commission of a fraud on the United

States", "to do certain acts in violation of their legal duty", "... * * collude in a fraud on the United States," "to allow a fraud to be committed on the United States," "to make opportunity for the commission of a fraud on the United States", "to do certain acts in violation of his official duty", "to omit to do a certain act or acts in violation of his lawful duty as an assistant United States attorney"; respectively, that is to say that the phrases, "a certain fraud," "a fraud", "certain acts" do not inform the defendants in any manner whatsoever what the said frauds and acts consisted of; and, furthermore, the context and meaning of said phrases indicate that the said frauds and acts were known, or must have been known to the grand jurors, and should, therefore, have been described in sufficient detail, so as to inform the defendants what the said frauds and acts were and when they were committed or were to be committed.

99 19. Paragraph 28 of each count is otherwise fatally defective in charging that the defendants would use money solicited to induce the defendants, Daniel D. Glasser and Norton I. Kretske, to unfaithfully discharge their duties, so "that they, the defendants, would be found not guilty and discharged", there is no allegation anywhere in the indictment that "the defendants" were charged with, or were about to be charged with, any crime.

20. Paragraphs 14, 18 and 23 of each count allege an attempt by the defendants to collude in a fraud on the United States. The term collude in its legal and literal sense means to conspire; therefore, under these paragraphs the defendants are charged with the impossible offense of conspiring to conspire.

21. Paragraphs 28, 29, 30 and 32 fail to allege, with sufficient certainty and particularity, the names of the persons who were to be solicited and the names of the said persons are not alleged as unknown to the grand jury and no excuse given for omitting their names and, therefore, these paragraphs are repugnant.

22. Paragraph 38 alleges that the defendant, Norton I. Kretske, maintained a certain office in the City of Chicago where various persons, charged with violation of the alcohol tax laws could go to from time to time and that the defendant, Norton I. Kretske, would accept and take money from these persons for and on behalf

of defendants and would employ the defendant, Alfred E. Roth, to represent these defendants. This paragraph does not allege with sufficient certainty whether the things therein alleged occurred while the defendant, Norton I. Kretske, was an official of the United States. If, it was during the time that he was an officer of the United States, it clearly attempts to charge a violation of Section 207, Title 18, United States Code, dealing with the asking of a bribe by an officer.

100 23. Paragraph 39 fails to allege, with sufficient certainty, what particular court records were destroyed.

24. The overt acts alleged as to the defendant, Alfred E. Roth, are 38, 46, 47 and 50. The entire substance of the acts charges is as consistent with the hypothesis of innocence as with that of guilt and the indictment, therefore, fails to allege an offense.

25. Both counts of the indictment fail to conclude "against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided."

And the defendant says, for each of the reasons, separately and severally considered, and upon all the reasons cumulatively considered, and upon each of said propositions and said indictment is insufficient, uncertain and informal, and in other particulars void and of no lawful effect to confer jurisdiction upon the court to try this defendant;

Wherefore, this defendant prays that this demurrer be sustained to said indictment and to each count thereof, separately and severally, and that the said indictment be quashed and that the said defendant go hence without day.

Alfred E. Roth,
One of the Defendants.

101 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

DEMURRER.

Now comes the defendant, Daniel D. Glasser, impleaded, etc., in his own proper person, and by George F. Callaghan, his attorney, and having heard said indict-

ment read, says, as to said indictment and each count thereof, that the matter therein contained, in manner and form as therein set forth, are not sufficient in law and that the defendant is not bound in law to answer the same, and this the defendant is ready to verify.

Wherefore for want of a sufficient indictment in this behalf the defendant prays judgment and that by the Court he may be dismissed and discharged from said premises in said indictment specified.

And for further cause of demurrer to said indictment, this defendant shows to the Court here, the following, to-wit:

102 First: The said indictment does not, nor does any count thereof, inform this defendant of the nature and cause of his accusation, with the certainty required by law.

Second: The said indictment does not, nor does any count thereof, charge or aver the commission of acts by this defendant, constituting any offense against any statute of the United States with the certainty required by law.

Third: The said indictment and each count thereof, is vague, indefinite and uncertain and, therefore, insufficient, for that the said indictment, or any count thereof, does not sufficiently aver or charge the elements or the supposed crime or offense therein attempted to be charged and it is impossible for this defendant to prepare a defense thereto.

Fourth: Each count of the indictment attempts to charge the giving to and the taking by an officer of the United States, money for the purpose of influencing the official action and conduct of such officer and attempts to charge therefore the bribery of public officials and said crime of bribery requiring for its commission concert of action by a plurality of agents, a conspiracy to commit said offense will not lie.

Fifth: Each count of the indictment attempts to charge that the defendant, Glasser, agreed with himself, received from himself, and gave to himself, money in order to influence himself in his own official actions and the indictment fails therefore to charge an offense for that, the defendant could not join in a conspiracy to offer and give himself a bribe.

103 Sixth: The indictment and each count thereof and, more particularly, Paragraph 14, which attempts to charge the conspiracy, does not name or designate the officer or officers mentioned therein and as to this essential element the defendants are uninformed.

Seventh: The indictment and each count thereof and, more particularly, Paragraph 14, is vague, indefinite, uncertain and so wanting in particulars and specification as to subject the defendants to surprise in that

(a) No officer or officers are named or designated therein.

(b) The use of both the singular and plural interchangeably, to wit: "officer or officers", "person", "his decision", "his or their official capacity", "his or their lawful duty", leaves the defendants uninformed and confused as to who are the persons and officers attempted to be described therein and whether it is intended to describe one or several such persons and officers.

Eighth: The said indictment is duplicitous in that it attempts to charge more than one conspiracy and in that it attempts to charge numerous substantive offenses each of which offenses requires a different kind and character of proof.

Ninth: The allegations of the indictment, and of each count thereof are so uncertain and indefinite that they violate the requirements of the Sixth Amendment to the Constitution of the United States of America.

Tenth: Paragraphs 14 of each count, standing alone, and unaided by the allegations of the means to accomplish the conspiracy attempted to be described in said paragraphs do not charge any crime, in that:

104 (a) The said paragraphs do not allege and inform the defendants what the "questions, matters, causes, and proceedings" were concerning which the defendant conspired to influence the decision and action of the said officers and employees; or what the "certain frauds on the United States" were; nor do the said paragraphs describe the "certain acts" which the said officers and employees were "to do and to omit from doing" in violation of his or their official duty.

(b) The allegations in said paragraphs cannot be aided or amplified by the means alleged to have accomplished the said pretended conspiracy, as set forth in paragraphs 15, to 39, both inclusive, of each count of the indictment.

Eleventh: If the said paragraphs 14 of each count can

be interpreted to charge the defendants Daniel D. Glasser and Norton I. Kretske with being the officers and employees of the United States whose judgment, decisions, and action in and on official questions, matters, questions, causes, and proceedings were to be corruptly influenced as, and in the manner, described in said paragraphs 14, then and in that event the said paragraphs 14 do not charge a crime, in that the said defendants Daniel D. Glasser and Norton I. Kretske are accused of conspiring to promise, offer, cause and procure to be promised and offered to themselves, Daniel D. Glasser and Norton I. Kretske, money and other things of value, with intent to influence the decision and action, in official matters, of themselves, the said Daniel D. Glasser and Norton I. Kretske.

Twelfth: The allegations of the indictment, and of each count thereof, are repugnant to each other, in that the grand jurors charge that the defendants conspired with each other, "and with other persons to the grand jurors unknown", yet the allegations of paragraph 12 of each count and the averments of certain overt acts described as having been committed in pursuance of the conspiracy indicate that the names of other conspirators 105 were known to the grand jurors at the time they returned the indictment, to wit:

(a) Overt acts numbered 8, 10, 14, and 16 of each count show that Victor Raubunas was a conspirator and as such was known to the grand jurors at the time they returned this indictment.

(b) Overt acts numbered 32, 33, 36, and 41 of each count show that Frank Hodorowicz was a conspirator and as such was known to the grand jurors at the time they returned this indictment.

(c) Overt act numbered 41 of each count shows that Mike Hodorowicz and Peter Hodorowicz were conspirators and as such were known to the grand jurors at the time they returned this indictment.

(d) Paragraph 12 of each count shows that a large number, to wit, twenty-three persons were conspirators and were known to the grand jurors at the time they returned this indictment.

Thirteenth: The allegations of paragraphs 14 of each count of the indictment and the averments of the means to accomplish the conspiracy, as set forth in paragraphs 15 to 39, both inclusive, of each count, are inconsistent,

and repugnant to each other, in that paragraphs 14 charge a conspiracy to violate Section 91, Title 18 of the Criminal Code of the United States, and paragraphs 15 to 39, both inclusive, describe violations of other and different penal sections of the Criminal Code of the United States.

Fourteenth: Paragraph 37 of each count of the indictment alleges that the persons named in paragraph 12 of each count "did pay money to the defendants" which averment of "defendants" included the defendants, Daniel D. Glasser and Norton I. Kretske, officers and employees of the United States; that said allegations charge the crime of bribery of the said public officials and said crime required its commission by a plurality of persons and can only be charged as a substantive offense committed by the givers and receivers of the bribe and the said persons or part of them cannot be charged with conspiracy.

106 Fifteenth: Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, and 30 of each count contain fatally inconsistent and repugant allegations in that they charge that the defendants, which include Daniel D. Glasser and Norton I. Kretske would solicit certain persons for money to pay to said Daniel D. Glasser to influence their official acts; in other words the said Glasser and Kretske are charged in said paragraphs with soliciting money to pay to themselves to corruptly influence and induce themselves to violate their official duties.

Sixteenth: Paragraphs 23, 24, 25, 26, 27, 31, and 32 of each count contain fatally inconsistent and repugnant allegations in that they charge that the defendants, which include Daniel D. Glasser, would solicit certain persons for money to pay to said Daniel D. Glasser to influence his official acts; in other words the said Glasser is charged in said paragraph with soliciting money to pay himself to corruptly influence and induce himself to corruptly influence and himself to violate his official duties.

Seventeenth: Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 34, and 35 of each count contain other fatally inconsistent and repugnant allegations in that they charge that the defendants, which include Louis Kaplan, would solicit from or contact "certain persons hereinafter referred to", which includes the said Louis Kaplan by the references in paragraphs 12 and 36 of each count, for money to be paid to officers of the United States in other words, the said defendant, Louis Kaplan, is charged with

soliciting from himself and contacting himself for money to be paid to officers of the United States.

107 Eighteenth: Paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of each count contain remote, vague, indefinite, and uncertain allegations, in that they charge the defendants with soliciting certain persons for money to be paid or promised to be paid to officers of the United States, Daniel D. Glasser and Norton I. Kretske to influence or induce them or the other defendants, to commit "a certain fraud on the United States", "to collude in a fraud on the United States", "to allow a fraud to be committed on the United States", "to make opportunity for the commission of a fraud on the United States", "to do certain acts in violation of their lawful duties as assistant United States attorneys", "to do certain acts, in violation of their legal duty", "to * * * collude in a fraud on the United States", "to allow a fraud to be committed on the United States", "to make opportunity for the commission of a fraud on the United States", "to do certain acts in violation of his official duty", "to omit to do a certain act or acts in violation of his lawful duty as an assistant United States attorney"; respectively, that is to say that the phrases, "a certain fraud", "a fraud", "certain acts" do not inform the defendants in any manner whatsoever what the said frauds and acts consisted of; and, furthermore, the context and meaning of said phrases indicate that the said frauds and acts were known, or must have been known to the grand jurors, and should, therefore, have been described in sufficient detail, so as to inform the defendants what the said frauds and acts were and when they were committed or were to be committed.

Nineteenth: Paragraph 28 of each count is otherwise fatally defective in charging that the defendants would use money solicited to induce the defendants, Daniel D. Glasser and Norton I. Kretske to unfaithfully discharge their duties, so "that they, the defendants, would be found not guilty and discharged", there is no allegation anywhere in the indictment that "the defendants" were charged with, or were about to be charged with, any crime.

108 Twentieth: Paragraphs 14, 18, and 23 of each count allege an attempt by the defendants to "collude" in a fraud on the United States, and the term "collude" in its legal and literal sense meaning "to conspire", under

these paragraphs the defendants are charged with the impossible offense of conspiring to conspire.

Twenty-First: Each count of the indictment fails to conclude that the acts of the defendants were either "contrary to the statute in such case made and provided" or "contrary to the peace and dignity of the United States".

Twenty-Second: The allegations of each count as contained in paragraphs 14 to 39 inclusive are fatally inconsistent and repugnant to the allegation contained in paragraph 10 for that it is alleged in said paragraph 10 that the defendant Kretschke ceased to be an officer of the United States on April 15, 1937, a period more than twenty-nine months prior to the return of this indictment.

Twenty-Third: The said indictment and each count thereof and more particularly paragraphs 12 and 13 of each count are vague, indefinite, and uncertain for that the defendants are not advised of the dates and circumstances of the arrest and charge of the persons therein named or as to whether said persons were arrested and charged collectively or separately.

Twenty-Fourth: The said indictment and each count thereof is vague, indefinite and uncertain for that:

(a) The defendants are not advised as to the time, place, and other circumstances of the doing of the acts and the solicitation mentioned in paragraphs 15 to 39 inclusive.

(b) The defendants are not advised as to when the persons are, mentioned in paragraphs 28, 29, and 32.

109 And the defendant says that the said indictment, for the reasons above stated, is insufficient, uncertain, and informal, and, in other particulars, void, and of no lawful effect to confer jurisdiction upon the Court to try this defendant, wherefore he prays judgment of the Court here that said indictment be quashed and that he may leave to depart hence without day.

Daniel D. Glasser,
Defendant.

By George F. Callaghan,
His Attorney.

I, George F. Callaghan, do hereby certify that I am a member of the bar of the District Court of the United States for the Northern District of Illinois, Eastern Division, and that I am attorney for the said defendant above named, and that I have read the indictment against the said defendant; that from such examination I am of the

opinion that the foregoing demurrer is well founded in fact and in law, and I do further certify that said demurrer is not interposed for delay.

George F. Callaghan.

110 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

• • (Caption—31825) • •

DEMURRER OF NORTON I. KRETSKE, ONE OF
THE DEFENDANTS HEREIN.

Now comes the defendant, Norton I. Kretske, by Harrington & McDonnell, his attorneys, and having read and considered the indictment herein, says that said indictment and the matters therein contained, in substance and in form as the same are therein alleged and set forth, are insufficient in law to require this defendant to plead to said indictment or to answer the same, and that said indictment is insufficient in law to sustain a judgment against this defendant for the following reasons:

Count I.

1. This count fails to charge any crime against the laws of the United States;

2. That this count is based upon the conclusions of the pleader and fails to set forth with reasonable certainty any facts from which these conclusions are drawn;

3. This count is vague, indefinite, uncertain and ambiguous in failing to allege:

a) When this defendant entered into the said conspiracy:

b) whether this defendant was an Assistant United States District Attorney for the Northern District of Illinois during the time when the persons named in paragraph 12 were arrested by officers of the United States
111 and charged with unlawfully violating certain laws of the United States, and whether this defendant was an Assistant United States District Attorney for the Northern District of Illinois during the times when said persons mentioned were given various hearings, as alleged in paragraph 13;

c) In paragraph 14, what officer of the United States

and what person acting for and on behalf of the United States in an official function it is contended the defendants, Daniel D. Glasser and Norton I. Kretske, intended to influence in the matter of certain acts and things which were by law brought before such officer or officers in his or their official capacity; and what officer or officers the defendants, Daniel D. Glasser and Norton I. Kretske, induced to do and omit from doing certain acts in violation of his or their lawful duty;

d) In paragraphs 14 to 16 inclusive, what certain questions, matters, causes and proceedings were pending, the description of said questions, matters, causes and proceedings, and the dates when they were pending;

e) In paragraphs 17 to 20 inclusive, what fraud on the United States it is contended the defendants intended to commit;

f) In paragraph 38, the date and time when defendant, Norton I. Kretske, was to maintain an office in the City of Chicago;

g) In paragraph 39, whether the records, papers, documents, etc. alleged to have been destroyed were official records and therefore a violation of Sections 234 and 235 of Title 18 of the Code of Laws of the United States, or were the personal records of the defendant;

4. This count is repugnant and inconsistent:

a) In alleging in paragraph 14 that the defendants, Daniel D. Glasser, Norton I. Kretske, Anthony Horton, Louis Kaplan and Alfred E. Roth, conspired with each other "and with divers other persons to the Grand Jurors unknown," whereas paragraphs 12 and 13 set forth the names of the other conspirators known to the Grand Jury, and also the Grand Jurors set forth various overt acts committed by some of the conspirators mentioned in paragraphs 12 and 13;

b) In alleging in paragraph 14 that this defendant promised and offered money and other things of value to an officer of the United States and to persons acting for and on behalf of the United States in an official function, with intent to influence his decision and action on certain questions which were by law brought before such officer or officers in his or their official capacity, for the reason that it attempts to charge this defendant with being a participant in a conspiracy to influence his own official action;

112 In alleging in paragraphs 15 to 22 inclusive, that the said defendants would solicit certain persons to

promise, offer to promise, cause to be promised, or procure to be promised, or that were to be promised to be paid, certain sums of money to be paid to the defendants, Daniel D. Glasser and Norton I. Kretske, for the reason that paragraph 14 of this count names the said Daniel D. Glasser and Norton I. Kretske, as two of the said defendants;

d) In alleging in paragraphs 28 to 30 inclusive, that the said defendants would corruptly induce and persuade themselves, defendants Daniel D. Glasser and Norton I. Kretske, to unfaithfully discharge their duties and commit a fraud on the United States for the reason that paragraph 14 of this count names Daniel D. Glasser and Norton I. Kretske as two of the said defendants;

e) In that said count in paragraph 14 attempts to charge a conspiracy to commit an offense against the United States mentioned in Section 91 of Title 18, Code of Laws of the United States, and in paragraph 37 and 38 alleges matters which would be a violation of Section 207, Title 18 of the Code of Laws of the United States;

Count II.

1. This count fails to charge any crime against the laws of the United States;

2. That this count is based upon the conclusions of the pleader and fails to set forth with reasonable certainty any facts from which these conclusions are drawn;

3. This count is vague, indefinite, uncertain and ambiguous in failing to allege:

a) when this defendant entered into the said conspiracy;

b) whether this defendant was an Assistant United States District Attorney for the Northern District of Illinois during the time when the persons named in paragraph 12 were arrested by officers of the United States and charged with unlawfully violating certain laws of the United States, and whether this defendant was an Assistant United States District Attorney for the Northern District of Illinois during the times when said persons mentioned were given various hearings, as alleged in paragraph 13;

c) In paragraph 14, what officer of the United States and what person acting for and on behalf of the United States in an official function it is contended the defendants, Daniel D. Glasser and Norton I. Kretske, intended to influ-

ence in the matter of certain acts and things which were by law brought before such officer or officers in his or 113 their official capacity; and what officer or officers the defendants, Daniel D. Glasser and Norton I. Kretske, induced to do and omit from doing certain acts in violation of his or their lawful duty;

d) In paragraphs 14 to 16, inclusive, what certain questions, matters, causes and proceedings were pending, the description of said questions, matters, causes and proceedings, and the dates when they were pending;

e) In paragraphs 17 to 20 inclusive, what fraud on the United States it is contended the defendants intended to commit;

f) In paragraph 38, the date and time when defendant, Norton I. Kretske, was to maintain an office in the City of Chicago;

g) In paragraph 39, whether the records, papers, documents, etc. alleged to have been destroyed were official records and therefore a violation of Sections 234 and 235 of Title 18 of the Code of Laws of the United States, or were the personal records of the defendants;

4. This count is repugnant and inconsistent:

a) In alleging in paragraph 14 that the defendants, Daniel D. Glasser, Norton I. Kretske, Anthony Horton, Louis Kaplan and Alfred E. Roth, conspired with each other "and with divers other persons to The Grand Jurors unknown," whereas paragraphs 12 and 13 set forth the names of the other conspirators known to the Grand Jury, and also the Grand Jurors set forth various overt acts committed by some of the conspirators mentioned in paragraphs 12 and 13:

b) In alleging in paragraph 14 that this defendant promised and offered money and other things of value to an officer of the United States and to persons acting for and on behalf of the United States in an official function, with intent to influence his decision and action on certain questions which were by law brought before such officer or officers in his or their official capacity, for the reason that it attempts to charge this defendant with being a participant in a conspiracy to influence his own official action;

c) In alleging in paragraphs 15 to 22 inclusive, that the said defendants would solicit certain persons to promise, offer to promise, cause to be promised, or procure to be promised, or that were to be promised to be paid, cer-

tain sums of money to be paid to the defendants, Daniel D. Glasser and Norton I. Kretske, for the reason that paragraph 14 of this count names the said Daniel D. Glasser

and Norton I. Kretske as two of the said defendants:
114 d) In alleging in paragraphs 28 to 30 inclusive, that the said defendants would corruptly induce and persuade themselves, defendants Daniel D. Glasser and Norton I. Kretske, to unfaithfully discharge their duties and commit a fraud on the United States for the reason that paragraph 14 of this count names Daniel D. Glasser and Norton I. Kretske as two of the said defendants;

e) In that said count in paragraph 14 attempts to charge a conspiracy to commit an offense against the United States mentioned in Section 88 of Title 18, Code of Laws of the United States, and in paragraphs 37 and 38 alleges matters which would be a violation of Sections 91 and 207, Title 18 of the Code of Laws of the United States;

5. The indictment, in each count, in paragraphs 28, 29 and 32, allege the defendants would contact and solicit certain persons without naming the certain persons and without alleging that the said certain persons were unknown to the Grand Jury.

For all of which causes of demurrer existing, this defendant, Norton I. Kretske, says that said alleged indictment is demurrable and is not sufficient in law for him to make plea unto.

Wherefore, this defendant prays that this demurrer be sustained and that said indictment be quashed, and that he go hence without day.

Norton I. Kretske,

One of the Defendants.

By Harrington & McDonnell,

His Attorneys.

115 And afterwards, to wit, on the 16th day of November, A. D. 1939, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered 116 IN THE DISTRICT COURT OF THE UNITED STATES.
Nov. 16, • • (Caption—31825) • •
1939.

Thursday, November 16, A. D. 1939.

Present: Honorable Patrick T. Stone, Judge.

This cause coming on to be heard on the defendants' demurrer to the indictment filed herein against them after arguments of counsel and due deliberation by the Court said demurrers are overruled to which ruling of the Court the defendants' by their attorneys duly except and leave be and the same is hereby given defendants to demand a bill of particulars within 10 days from this date.

Entered 117 And afterwards, to wit, on the 22nd day of Novem-
Nov. 22, ber, A. D. 1939, being one of the days of the regular
1939. November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

118 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

Wednesday, November 22, A. D. 1939.

Present: Honorable James H. Wilkerson, Judge.

On motion of defendants' attorneys It Is Ordered that the time within which the defendants are to file their motions for a bill of particulars be and the same is hereby extended to November 29, A. D. 1939.

119 And on, to wit, the 29th day of November A. D. 1939 came the defendants by their attorneys and filed in the Clerk's office of said Court certain Petitions for Bill of Particulars in words and figures following, to wit:

120 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

Filed
Nov. 29,
1939.

PETITION OF DANIEL D. GLASSER, A CERTAIN
DEFENDANT FOR BILL OF PARTICULARS.

To the Honorable Patrick Stone, Judge of said Court:

Now comes the defendant, Daniel D. Glasser by George F. Callaghan, his attorney, and, without waiving any of his rights to the exceptions taken to the legal sufficiency and the form of the indictment and expressly saving and reserving unto himself all said rights and pursuant to the order of court entered on November 16, 1939, files this petition for a bill of particulars as to the following matters alleged in the indictment.

Count I.

1. State the names of "the persons" alleged in paragraph 14 to be "acting for and on behalf of the United States."

2. Who are the "officers" mentioned in paragraph 14 whom the defendant Glasser and the other defendants conspired to promise, offer, cause and procure to be promised and offered money and other things of value?

3. When and where was the conspiracy charged in Count 1 entered into by the defendant Glasser and who were the members of the conspiracy?

4. State the nature, time, place, and amount of each promise and offer made to an officer of the United States and by whom and to whom each such promise and offer was made.

5. State the time, place, amount, and circumstances of each payment of money to the defendant Glasser by the persons named in paragraph 12 of the indictment 121 whom it is alleged in paragraph 37 "did pay money to the defendants."

6. State the names of the persons referred to in paragraphs 28, 29, and 32 as "certain persons," "persons," and "said persons."

7. What is the fraud the officer or officers of the United States and persons acting for and on behalf of the United States in an official function under and by authority of a

department and office of the Government of the United States was to commit and aid in committing and collude in committing?

8. What were the acts the officer or officers or persons acting for and on behalf of the United States in an official function in and by authority of a Department of the United States were to do and omit from doing, in violation of his or their lawful duties?

9. State the particulars of the arrest and subsequent proceedings against each of the persons named in paragraph 12 of the indictment giving the dates, titles, cause numbers, and disposition of each such arrest and proceeding.

10. What sum or sums of money or other things of value was it conspired and agreed to promise, offer, cause or procure to be promised and offered to the officers and persons mentioned in paragraph 14?

11. Did the defendant Glasser solicit "certain sums of money" or any promise or offer of "certain sums of money"? If the answer is in the affirmative, please state when, where and from whom.

12. When, where, and by whom was any "certain sum of money" promised to be paid or offered to the defendant Glasser?

13. In what causes, matters, and proceedings,

a. is it claimed the defendant Glasser made decisions so that certain persons would not be charged with a violation of the laws of the United States?

122 b. were persons found not guilty and discharged because of any unfaithful performance of duty by the defendant Glasser?

c. did the defendant commit a fraud on the United States by making legal motions to dismiss charges against certain persons?

d. was information withheld from the Grand Jury?

e. did the defendant Glasser give confidential information to the defendants?

f. did the defendant Glasser unduly delay and prolong the proceedings?

14. What records, files, books, papers, documents, court records, cards, and indexes were destroyed?

15. Is the Louis Kaplan named in paragraph 12 the same Louis Kaplar named as a defendant in this indictment?

Count II.

1. State the names of "the persons" alleged in paragraph 14 to be "acting for and on behalf of the United States."

2. Who are the "officers" mentioned in paragraph 14 whom the defendant Glasser and the other defendants conspired to promise, offer, cause and procure to be promised and offered money and other things of value?

3. When and where was the conspiracy charged in Count 2 entered into by the defendant Glasser and who were the then members of the conspiracy?

4. State the nature, time, place, and amount of each promise and offer made to an officer of the United States and by whom and to whom each such promise and offer was made.

123 5. State the time, place, amount, and circumstances of each payment of money to the defendant Glasser by the persons named in paragraph 12 of the indictment whom it is alleged in paragraph 37 "did pay money to the defendants."

6. State the names of the persons referred to in paragraphs 28, 29, and 32 as "certain persons," "persons," and "said persons."

7. What is the fraud the officer or officers of the United States and persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United States was to commit and aid in committing and collude in committing?

8. What were the acts the officer or officers or persons acting for and on behalf of the United States in an official function in and by authority of a Department of the United States were to do and omit from doing, in violation of his or their lawful duties?

9. State the particulars of the arrest and subsequent proceedings against each of the persons named in paragraph 12 of the indictment giving the dates, titles, cause numbers, and disposition of each such arrest and proceeding.

10. What sum or sums of money or other things of value was it conspired and agreed to promise, offer, cause or procure to be promised and offered to the officers and persons mentioned in paragraph 14?

11. Did the defendant Glasser solicit "certain sums of

money" or any promise or offer of "certain sums of money"? If the answer is in the affirmative, please state when, where and from whom.

12. When, where, and by whom was any "certain sum of money" promised to be paid or offered to the defendant Glasser?

124 13. In what causes, matters, and proceedings,

a. is it claimed the defendant Glasser made decisions so that certain persons would not be charged with a violation of the laws of the United States?

b. were persons found not guilty and discharged because of any unfaithful performance of duty by the defendant Glasser?

c. did the defendant commit a fraud on the United States by making legal motions to dismiss charges against certain persons?

d. was information withheld from the Grand Jury?

e. did the defendant Glasser give confidential information to the defendants?

f. did the defendant Glasser unduly delay and prolong the proceedings?

14. What records, files, books, papers, documents, court records, cards, and indexes were destroyed?

15. Is the Louis Kaplan named in paragraph 12 the same Louis Kaplan named as a defendant in this indictment?

Your petitioner further represents unto your Honor that he cannot receive a fair and impartial trial and afford himself a fair opportunity to prepare and submit defenses to each and all of the charges brought against him unless he is furnished with the information requested in this petition and which is not alleged in the indictment.

Your petitioner has no means of obtaining such information or any of such information requested in this petition and which the allegations in said indictment do not furnish, except through and by means of a bill of particulars.

125 That unless the prosecution is directed to furnish the particulars specified in this petition there will be no means available now or hereafter to identify the alleged conspiracy charged in said indictment and each amount thereof and for want of such means said indictment furnishes no protection to your petitioner against other and further indictments for the same alleged offenses, nor in any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses.

Wherefore, your petitioner prays that an order be entered upon the United States Attorney to furnish your petitioner, within a reasonable time to be fixed by the court, with a bill of particulars of all and every of the accusations charged in said indictment and more specifically of all and every of the matters and things specified and requested in this petition or for such relief as to the Court shall seem meet and just.

Daniel D. Glasser,
Defendant.

George F. Callaghan,
Attorney for Defendant.

126 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

PETITION OF ALFRED E. ROTH, A CERTAIN DEFENDANT, FOR BILL OF PARTICULARS.

To the Honorable Patrick Stone, Judge of Said Court:

Now comes your petitioner, Alfred E. Roth, one of the defendants in the above entitled cause and, without waiving any of his rights to the exceptions taken to the legal sufficiency and the form of the indictment and expressly saving and reserving unto himself all said rights and, pursuant to the order of Court entered on November 16, 1939, files this petition for a bill of particulars.

Count I.

1. When is it contended this defendant entered in to the alleged conspiracy and who were the then members of the conspiracy;

2. What officer or officers of the United States or the persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United States did the defendants conspire to promise, offer, cause and procure to be promised and offered money and other things of value with intent to influence their decisions and actions on certain questions, matters, causes and proceedings which were at times pending and which were by law brought before such officer or officers;

2. Where was the conspired promise, offer, causing
127 and procuring to be promised and offered to be made;

4. When was the conspired promise, offer, causing
and procuring to be promised and offered to be made;

5. If a person other than the defendants was to promise,
offer, cause and procure to be promised and offered, state
the name of the person and when and where the person
was to promise, offer, cause and procure to be promised
and offered and to whom;

6. What sum or sums of money or other things of value
was conspired to be promised, offered, caused or procured
to be promised or offered;

7. What are the titles, cause numbers, dates and char-
acter of the certain questions, matters, causes and pro-
ceedings which were at times pending and which were by
law brought before such officer or officers and persons act-
ing for and on behalf of the United States in an official
function under and by authority of a department and office
of the Government of the United States, when and where
were they instituted, in what court and during what period
of time were they pending;

8. What is the fraud the officer or officers of the United
States and persons acting for and on behalf of the United
States in an official function under and by authority of a
department and office of the Government of the United
States was to commit and aid in committing and collude
in committing and the acts the officer or officers or persons
acting for and on behalf of the United States in an official
function in and by authority of a Department of the United
States were to do and omit from doing, in violation of his
or their lawful duties;

9. What are the names of the particular persons solic-
ited for sums of money for the particular purposes, as
alleged in paragraph 15 to 27, inclusive, and when and
where, and in what matters, causes and proceedings, giving
the title, cause number and description.

128 10. What are the names of the persons solicited for
sums of money for the particular purposes, as alleged
in paragraph 28, and when and where and the title and
cause number of the complaints pending before the par-
ticular United States Commissioner and the nature of
the unfaithful duties to be discharged;

11. What are the names of the persons solicited for

sums of money for the particular purposes, as alleged in paragraph 29, and when and where;

12. What are the names of the particular persons solicited for sums of money for the particular purposes, alleged in paragraph 30, and when and where and the title and cause number pending before the particular United States Commissioner;

13. What are the names of the particular persons solicited for sums of money for the particular purposes alleged in paragraph 31, and when and where; and the particular persons held to the particular district court by the particular commissioner to await the action of the particular grand jury.

14. What are the names of the persons solicited for sums of money, as alleged in paragraph 32, and when and where and the nature of the corrupt judgment or decision to be rendered;

15. What are the names of the particular persons contacted, as alleged in paragraph 33 and when and where, and the particular title, cause number and court where the proceedings were pending and the names of the witnesses that were to become discouraged and disheartened and cease to have interest in said proceedings;

16. What are the names of the particular persons contacted, as alleged in paragraph 34, and when and where and the names of the persons who were charged and the names of the persons who were about to be charged with violations of the law and when and where, and the names of the persons who believed they were about to be charged with a violation of the law and when and where;

17. What are the names of the particular persons solicited for sums of money, as alleged in paragraph 35, and when and where and the acts that were to be done by Daniel D. Glasser in violation of his lawful duties;

18. What are the names of the particular persons that were to answer certain indictments and the motion or motions agreed upon between Daniel D. Glasser and Alfred E. Roth, to be made before various district judges, naming the district judges and the particular title and cause number, as alleged in paragraph 37, and the matters about which Alfred E. Roth was to inform Norton I. Kretske in which matters Daniel D. Glasser was representing the United States, as alleged in paragraph 37, and the matters

which Daniel D. Glasser advised Anthony Horton of concerning the activities of the investigators of the Alcohol Tax Unit, as alleged in paragraph 37, and the matters that Daniel D. Glasser was to advise Anthony Horton of regarding certain persons about to be arrested by the agents of the Alcohol Tax Unit, as alleged in paragraph 37;

19. What are the names of the persons that were engaged in violating the alcohol tax laws that were to be complained against and that were complained against or indicted by the United States that Norton I. Kretzke was to employ Alfred A. Roth as their lawyer, as alleged in paragraph 38;

20. What are the particular records, files, books, papers, documents, office records, cards and indexes that were destroyed;

Count II.

1. When is it contended this defendant entered into the alleged conspiracy and who were the then members of the conspiracy;

2. What officer or officers of the United States or the persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United

States did the defendants conspire to promise, offer, cause and procure to be promised and offered money and other things of value with intent to influence their decisions and actions on certain questions, matters, causes and proceedings which were at times pending and which were by law brought before such officer or officers;

3. Where was the conspired promise, offer, causing and procuring to be promised and offered to be made;

4. When was the conspired promise, offer, causing and procuring to be promised and offered to be made;

5. If a person other than the defendants was to promise, offer, cause and procure to be promised and offered, state the name of the person and when and where the person was to promise, offer, cause and procure to be promised and offered and to whom;

6. What sum or sums of money or other things of value was conspired to be promised, offered, caused or procured to be promised or offered;

7. What are the titles, cause numbers, dates and character of the certain questions, matters, causes and pro-

ceedings which were at times pending and which were by law brought before such officer and officers and persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United States; when and where were they instituted, in what court and during what period of time were they pending;

8. What is the fraud the officer or officers of the United States and persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United States was to commit and aid in committing and collude in committing and the acts the officer or officers or persons acting for and on behalf of the United States in an official function in and by authority of a department of the United

States were to do and omit from doing, in violation of his or their lawful duties;

9. What are the names of the particular persons solicited for sums of money for the particular purposes, as alleged in paragraph 15 to 27, inclusive, and when and where, and in what matters, causes and proceedings, giving the title, cause number and description;

10. What are the names of the persons solicited for sums of money for the particular purposes, as alleged in paragraph 28, and when and where and the title and cause number of the complaints pending before the particular United States Commissioner and the nature of the unfaithful duties to be discharged;

11. What are the names of the persons solicited for sums of money for the particular purposes, as alleged in paragraph 29, and when and where;

12. What are the names of the particular persons solicited for sums of money for the particular purposes, alleged in paragraph 30, and when and where and the title and cause number pending before the particular United States Commissioner;

13. What are the names of the particular persons solicited for sums of money for the particular purposes alleged in paragraph 31, and when and where, and the particular persons held to the particular district court by the particular commissioner to await the action of the particular grand jury;

14. What are the names of the persons solicited for sums of money, as alleged in paragraph 32, and when and

where and the nature of the corrupt judgment or decision to be rendered;

15. What are the names of the particular persons contacted, as alleged in paragraph 33 and when and where, and the particular title, cause number and court where the proceedings were pending and the names of the witnesses that were to become discouraged and disheartened and cease to have interest in said proceedings;

132 16. What are the names of the particular persons contacted, as alleged in paragraph 34, and when and where and the names of the persons who were charged and the names of the persons who were about to be charged with violations of the law and when and where, and the names of the persons who believed they were about to be charged with a violation of the law and when and where;

17. What are the names of the particular persons solicited for sums of money, as alleged in paragraph 35, and when and where and the acts that were to be done by Daniel D. Glasser in violation of his lawful duties;

18. What are the names of the particular persons that were to answer certain indictments and the motion or motions agreed upon between Daniel D. Glasser and Alfred E. Roth, to be made before various district judges, naming the district judges and the particular title and cause number, as alleged in paragraph 37, and the matters about which Alfred E. Roth was to inform Norton I. Kretske in which matters Daniel D. Glasser was representing the United States, as alleged in paragraph 37, and the matters which Daniel D. Glasser advised Anthony Horton of concerning the activities of the investigators of the Alcohol Tax Unit, as alleged in paragraph 37, and the matters that Daniel D. Glasser was to advise Anthony Horton of regarding certain persons about to be arrested by the agents of the Alcohol Tax Unit, as alleged in paragraph 37;

19. What are the names of the persons that were engaged in violating the alcohol tax laws that were to be complained against and that were complained against or indicted by the United States that Norton I. Kretske was to employ Alfred E. Roth as their lawyer, as alleged in paragraph 38.

20. What are the particular records, files, books, papers, documents, office records, cards and indexes that were destroyed;

Your petitioner further respectfully represents unto your

Honor that he can not receive a fair and impartial trial
133 and affords himself a fair opportunity to prepare and
submit defences to each and all of the charges brought
against him unless he is furnished with the information
requested in this petition and which is not alleged in the
indictment;

Your petitioner has no means of obtaining such information or any such information requested in this petition and which the allegations in said indictment do not furnish, except through and by means of a bill of particulars;

That unless the prosecution is directed to furnish the particulars specified in this petition there will be no means available now or hereafter to identify the alleged conspiracy charged in said indictment and each count thereof and for want of such means said indictment furnishes no protection to your petitioner against other and further indictments for the same alleged offenses, nor in any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses;

Wherefore, your petitioner respectfully requests your Honor for an order upon the United States Attorney to furnish your petitioner, within a reasonable time, to be fixed by the court, with a bill of particulars of all and every of the accusations charged in said indictment and more specifically of all and every of the matters and things specified and requested in this petition, or for such relief as to the Court shall seem meet and just.

Alfred E. Roth,
Petitioner.

State of Illinois, }
County of Cook. } ss:

Alfred E. Roth being first duly sworn upon oath deposes and says that he has read the above and foregoing petition by him subscribed and that the same is true in substance and in fact.

Alfred E. Roth.

Subscribed and sworn to before me this 29th day of November, A. D. 1939.

(Seal)

Betty Ford,
Notary Public.

134 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

PETITION FOR BILL OF PARTICULARS.

To the Honorable Patrick Stone, Judge of Said Court:

Now comes your petitioner, Norton I. Kretske, one of the defendants in the above entitled cause, and leave of court having first been obtained by order entered herein on the 16th day of November, 1939, at which time the Court overruled the demurrer interposed to the indictment, but stated:

“The Court: In the matter of the United States of America *vs.* Daniel D. Glasser, et al., the Court is of the opinion that while the indictment is somewhat vague and indefinite, nevertheless it does charge the defendants with conspiracy to defraud the United States.

“However, I am of the opinion now that the defendants are entitled to a bill of particulars setting forth exactly what is charged and the times, places and persons involved.

“I would suggest that counsel for the defendants—that it is only right and proper, to lessen their burden of defense and so they may properly prepare, that they know definitely and in particular just exactly what they are charged with. This is not set out as definitely as it ought to be.”

and files this his petition for a bill of particulars of the following matters, things and happenings in said indictment contained, in the following respects:

First Count.

Paragraphs 14 to 16 inclusive:

a) When is it contended this defendant entered into the alleged conspiracy;

b) What officer of the United States, or person acting for and on behalf of the United States, was to be promised, offered, caused and procured to be promised and offered, money and other things of value for the purpose of influencing his or their decision and action;

135 c) What are the titles, cause numbers and dates of the certain questions, matters, causes and proceedings

alleged to have been pending; when and where were they instituted; in what court and during what period of time were they pending and what was the disposition of these certain questions, matters, causes and proceedings;

d) What are the dates, entitlements, and the kind and character of the certain questions, matters, causes and proceedings which were brought before such officer or officers in their official capacity and in which it was intended the decision and action of said officer or officers was to be influenced;

e) What acts were said officer or officers induced to do and what acts were they induced to omit to do in violation of his or their lawful duty;

Paragraphs 15 to 32 inclusive:

a) In what matters, causes and proceedings as to titles, cause numbers and descriptions did the defendants solicit persons to pay money;

b) What defendants made the solicitations, and what persons were solicited, and on what dates, at what places, and in what amounts were these persons solicited;

Paragraphs 17 to 20 inclusive:

What is the character of the alleged fraud which it is contended the defendant, Norton I. Kretske, was to commit;

Paragraph 39:

What records, files, books, papers, documents, court records, office records, cards and indexes were destroyed, and by whom and at what times and places.

Second Count.

Paragraphs 14 to 16 inclusive:

a) When is it contended this defendant entered into the alleged conspiracy;

b) What officer of the United States, or person acting for and on behalf of the United States, was to be promised, offered, caused and procured to be promised and offered, money and other things of value for the purpose of influencing his or their decision and action;

136 c) What are the titles, cause numbers and dates of the certain questions, matters, causes and proceed-

ings alleged to have been pending; when and where were they instituted; in what court and during what period of time were they pending and what was the disposition of these certain questions, matters, causes and proceedings;

d) What are the dates, entitlements, and the kind and character of the certain questions, matters, causes and proceedings which were brought before such officer or officers in their official capacity and in which it was intended the decision and action of said officer or officers was to be influenced;

e) What acts were said officer or officers induced to do and what acts were they induced to omit to do in violation of his or their lawful duty;

Paragraphs 15 to 32 inclusive:

a) In what matters, causes and proceedings as to titles, cause numbers and descriptions did the defendants solicit persons to pay money;

b) What defendants made the solicitations, and what persons were solicited, and on what dates, at what places, and in what amounts were these persons solicited;

Paragraphs 17 to 20 inclusive:

What is the character of the alleged fraud which it is contended the defendant, Norton I. Kretske, was to commit;

Paragraph 39:

What records, files, books, papers, documents, court records, office records, cards and indexes were destroyed, and by whom and at what times and places.

Your petitioner further represents unto your Honor that he has been advised by his counsel that they cannot properly represent your petitioner, nor can your petitioner receive a fair and impartial trial, nor is it safe for him to go to trial upon any one or more of the accusations made 137 against him in said indictment until they have made adequate preparation to meet the evidence which will, or may be offered against him upon the trial of said cause in support of all and each of said accusations, and that they cannot possibly make any preparation whatever to meet such evidence that will or may be offered against him on the trial of said cause in support of any of said accusations, unless and until your petitioner obtains such infor-

mation requested in this petition, and which the allegations in said indictment do not furnish;

That your petitioner has no means of obtaining such information, or any of such information, requested in this petition, and which the allegations in said indictment do not furnish, except through and by means of a bill of particulars of all and each of said accusations;

That unless the prosecution is directed to furnish the particulars specified in this petition, there will be no means available now or hereafter to identify the alleged conspiracy charged in said indictment and each count thereof, and for want of such means said indictment furnishes no protection to your petitioner against other and further indictments for the same alleged offenses, nor could any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses.

Wherefore, your petitioner respectfully requests your Honor for an order upon the prosecution to furnish your petitioner, within a reasonable time to be fixed by the Court, with a bill of particulars of all and every of the accusations charged in said indictment, and more specifically of all and every of the matters and things specified and requested in this petition.

138 State of Illinois }
County of Cook } ss.

Norton I. Kretske, being first duly sworn, upon oath deposes and says that he is one of the defendants in the above entitled cause; that he has read the above and foregoing petition subscribed by him; that he knows the contents thereof and that the allegations therein contained are true.

Norton I. Kretske.

Subscribed and sworn to before me this 22nd day of November, A. D. 1939.

(Seal)

Rose E. Lee,
Notary Public.

Entered
Dec. 20,
1939.

139 And afterwards, to wit, on the 20th day of December, A. D. 1939, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge appears the following entry, to wit:

140 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

ORDER.

This cause coming on to be heard on the petitions of the defendant for an order upon the United States Attorney to furnish said defendants with bills of particulars, and the court having considered said petitions and the various questions set forth therein, and having heard the arguments of counsel thereon,

It Is Therefore Ordered that William J. Campbell, United States Attorney, be and he is hereby directed to file answers to the following questions set forth in the petition of Norton I. Kretske, within five days from date hereon;

First Count.

Paragraphs 14 to 16, inclusive questions (a), (b), (c), (d) and (e) appearing on pages 1 and 2.

Paragraphs 15 to 32, inclusive, questions (a) and (b) appearing on page 2.

Paragraphs 17 to 20, Question appearing on page 2 under this subdivision but not numbered.

Second Count.

Paragraphs 14 to 16 inclusive. Questions (a), (b), (c), (d), and (e) appearing on pages 2 and 3.

Paragraphs 15 to 32 inclusive Questions (a) and (b) appearing on page 3.

Paragraphs 17 to 20. Question appearing on page 3 under this subdivision but not numbered.

141 It Is Further Ordered that William J. Campbell, United States Attorney, be and he is hereby directed to file answers to the following questions appearing in the petition of Daniel D. Glasser:

Count One.

Paragraphs 1 to 9, inclusive, on pages 1 and 2.
Paragraphs 11, 12, 13, and 15 on pages 2 and 3.

Count Two.

Paragraphs 1 to 9, inclusive, on pages 3 and 4.
Paragraphs 11, 12, 13 and 15 on pages 4 and 5.

It Is Further Ordered that the Government's proof will not be limited to the answers by it to the said demands for particulars if during the trial of this cause, it appears to the satisfaction of the Court that in the interest of justice the said proof should not be so limited.

Enter:

Patrick T. Stone,
Judge.

Dated at Chicago, Illinois this 20th day of December,
A. D. 1939.

142 And on, to wit, the 28th day of December, A. D. 1939 came the United States by its attorney and filed in the Clerk's office of said Court certain Bill of Particulars in words and figures following, to wit:

Filed
Dec. 28,
1939.

143 IN THE DISTRICT COURT OF THE UNITED STATES OF
AMERICA.

• • (Caption—31825) • •

BILL OF PARTICULARS.

Now comes the United States by William J. Campbell, United States Attorney for the Northern District of Illinois, and in compliance with the Order of this Court, entered on December 20, A. D. 1939, does furnish to the defendants the following information. To the defendant, Norton I. Kretzke, the following answers to the following questions:

Question (a) When is it contended this defendant entered into the alleged conspiracy?

Answer: The defendant, Norton I. Kretske, it is contended, entered into the conspiracy on, to wit, April 1, 1935.

Question (b) What officer of the United States or persons acting for or on behalf of the United States was to be promised, offered, caused and procured to be promised and offered, money and other things of value for the purpose of influencing his or their decision and action?

Answer: Daniel D. Glasser and Norton I. Kretske.

144 (Note: Whenever it shall hereinafter appear that the word "Commissioner" is used, it will be understood that we are speaking of United States Commissioner Edwin K. Walker; that whenever the words "District Judges" are used, it will be understood that we are speaking of United States District Judges holding court in the United States Court House at Chicago, Illinois; whenever the word "motion" is used, it will be understood that we are speaking of either a written or an oral motion made in open court or filed with the Clerk of the District Court of the United States; whenever the word "arraigned" is used, it will be understood to mean that the defendants were called in open court to answer to an indictment, or before the Commissioner to a sworn complaint charging them with the commission of a crime, at which time they were requested to plead to said complaint or indictment; whenever the word "complaint" is used, it shall be understood to mean a sworn complaint filed before United States Commissioner Walker; whenever the word "cause" is used, it will be understood to mean either a proceeding wherein a formal complaint was filed before the United States Commissioner, or an indictment returned by the Grand Jury, which indictment has been returned in open court.)

Question (c) What are the titles, case numbers, and dates of the certain questions, matters, causes, and proceedings alleged to have been pending; when and where were they instituted; in what court and during what period of time were they pending, and what was the disposition of these certain questions, matters, causes, and proceedings?

Answer: (1) United States *vs.* Peter Hodorowicz. Before the Commissioner. Commissioner's Number 19076. On January 25, 1937, a complaint was filed against the above defendant, charging a violation of Section 1181 of Title 26 of the United States Code, and Section 201 of LTA 1934. The defendant was arraigned on January 26, 1937, a hearing was held on February 1, 1937, at which time he was bound over to the Grand Jury. On the same date, bond was

furnished in the amount of \$1500. This case was never presented to the Grand Jury.

145 United States *vs.* Walter Halevan, alias Walter Hort. Before the Commissioner. Number 19077. On January 25, 1937, a complaint was filed against the above defendant, charging a violation of Section 1181 of Title 26, U. S. C. A. and Section 201 LTA 1934. The defendant was arraigned on January 26, 1937, a hearing was held on February 1, 1937, at which time he was held to the District Court to await the action of the Grand Jury. On the same day bond was furnished in the amount of \$500.00. This case was never presented to the Grand Jury.

(3) United States *vs.* Walter Hort. Before the Commissioner. Number 19087. On January 28, 1937, a complaint was filed against the above defendant, charging a violation of Section 1181 of Title 26, U. S. C. A. and Section 201 LTA 1934. The defendant was arraigned on January 28, 1937, a hearing was held on that date, at which time he was discharged, by order of United States Commissioner.

(4) United States *vs.* Clem Dowiat. Before the Commissioner. Number 19427. On June 30, 1937, a complaint was filed against the above defendant, charging a violation of Section 1181 and Section 404, Title 26, U. S. C. A., and Section 201 LTA 1934. The defendant was arraigned on June 30, 1937, a hearing was held, continued to July 9, 1937, on which date the defendant was held to the District Court to await the action of the Grand Jury. On October 6, 1937, the Grand Jury voted a "No True Bill."

146 (5) United States *vs.* Peter Hodorowicz and Clem Dowiat. Before the Commissioner. Number 19574. On September 2, 1937, a complaint was filed against the above defendant, charging a violation of Sections 281, 306, and 1181 of Title 26, U. S. C. A., and Section 201 LTA 1934. The defendant was arraigned on September 2, 1937, and the case was then continued to September 9, 1937, then to September 13, 1937, then to September 23, 1937, at which time a hearing was held and the case was then continued to September 24, 1937, when both defendants were discharged by order of the United States Commissioner.

(6) United States *vs.* Ralph Sharp, alias Ralph Hoppe, alias Ralph Bogush. Before the Commissioner. Number 18978. On December 21, 1936, a removal complaint, involving a violation of Section 88 of Title 18, U. S. C. A., was

filed against the above defendant for his removal to the Billings District in Montana. A warrant issued on December 21, 1936. The defendant was arrested on February 10, 1937, his bond was taken on February 12, 1937; the case was then continued to February 16, 1937, and then continued to February 26, 1937, when the defendant was discharged, by order of the United States Commissioner.

(7) *United States vs. Walter Kwiatowski.* Before the Commissioner. Number 20478. On August 26, 1938, a search warrant was issued, describing the premises located at 7915 Saginaw Avenue, Chicago, Illinois. A complaint was filed on the same date, charging a violation of Sections 281, 306, 307, and 1181 of Title 26, U. S. C. A. The defendant was arraigned on August 26, 1938, when the cause was continued to August 31, 1938; then to September 12, 1938, and then to September 14, 1938, when after a hearing by the Commissioner, the defendant was discharged, by order of the United States Commissioner.

147 (8) *United States vs. Paul Svec.* Before the Commissioner. Number 20783. On December 10, 1938, a complaint was filed against the above defendant, charging a violation of Sections 281, 306, 307, and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934. The defendant was arraigned on December 10, 1938, and the hearing was continued to December 14, 1938, and then to December 21, 1938, when the defendant was discharged, by order of the United States Commissioner.

(9) *United States v. William J. Workman, et al.* In the United States District Court for the Northern District of Illinois, D. C. Number 29092. This indictment was returned June 28, 1935, and charged some thirty-two defendants with violations of Sections 281, 303, 306, 307, and 1181 of Title 26, U. S. C. A.; Section 201, LTA 1934, and Section 88 of Title 18, U. S. C. A. On April 1, 1936, the cause against H. S. Welch and N. L. Welch was dismissed for want of prosecution.

(10) *United States vs. William Burba.* Before the Commissioner. Number 19300. On April 30, 1937, a complaint was filed against the above defendant, charging a violation of Section 1181 of Title 26, U. S. C. A., and Section 201 LTA 1934. Bond in the amount of \$1,000 was furnished on April 30, 1937, and the case continued to May 8, 1937, then to May 15, 1937, when the defendant was held to the District Court to await the action of the Grand Jury. On June 24, 1937, the Grand Jury returned an in-

dictment, charging the same defendant Burba with a violation of Section 201, LTA 1934, and Section 1181, Title 26, U. S. C. A. (D. C. Number 30379). On October 8, 1937, the defendant entered a plea of guilty and received a sentence of three months and a fine of \$225 on Count 1 of the indictment, and a fine of \$225 on Count 2 of the indictment.

148 (11) *United States vs. Anthony Hodorowicz, Clem Dowiat, and Elmer Swanson.* Before the Commissioner. Number 19888. On January 3, 1938, a complaint was filed against the defendants, Anthony Hodorowicz and Clem Dowiat, charging a violation of Sections 281, 284, 306, and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934. The defendants were arraigned on January 3, 1938, and the case was continued to February 16, 1938, when the defendants were discharged, by order of the United States Commissioner.

United States vs. Carl Swanson. Before the Commissioner. Number 19893. A complaint was filed against the above defendant, Carl Swanson, charging a violation of Sections 281, 284, 306, and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934. A hearing was held on January 3, 1938, and continued to January 5, 1938, then continued to January 26, 1938, and then continued to February 16, 1938, when this defendant was discharged, by order of the United States Commissioner.

United States vs. Anthony Hodorowicz, Clem Dowiat, and Elmer Swanson. An indictment returned against the above three defendants charged a violation of Sections 281 and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934. On April 28, 1938, an Order was entered, on motion of Assistant United States District Attorney Daniel D. Glasser, striking this indictment with leave to reinstate.

(12) *United States vs. Leo Vitale, Petro Mando, Dominick Sabatina, and Michael Simanello.* In the District Court of the United States for the Northern District of Illinois. D. C. Number 30950. On April 26, 1938, an indictment was returned, charging the above defendants with a violation of Sections 281, 261, 303, 306, 307, 1181, and 193 of Title 26, U. S. C. A., and Section 201, LTA 1934.

149 On July 11, 1938, the defendant, Leo Vitale, received a sentence of one hour in the custody of the United States Marshal. On October 21, 1938, all counts except Count 2 were dismissed as to the defendant Simanello; plea of not guilty was withdrawn and plea of

guilty entered as to Simanello. The defendant was sentenced to serve six months and pay a fine of \$500. A motion for probation was entered by defendant Simanello and said motion was continued to November 11, 1938, when the imposition of sentence was suspended and probation allowed. On November 21, 1938, the cause was stricken from the docket with leave to reinstate as to the defendants, Petro Mando and Dominick Sabatina.

(13) *United States vs. Stanley Slesuraitis*, alias Stanley Slesure, Joseph Cole, Louis Pregenzer, Lincoln Rankin, and Ralph Bogush. United States District Court Number 30992. This indictment was returned June 1, 1938, and charged the above defendants with a violation of Sections 281, 261, 193, 303, 306, 307, and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934, and Section 88 of Title 18, U. S. C. A., at Spring Grove, Illinois, on January 19, 1937. The defendant, Lincoln Rankin, was named in a United States Commissioner's complaint, Number 19067, and the defendants, Louis Pregenzer and Joseph Cole were named in a United States Commissioner's complaint, Number 19238; the defendant Stanley Slesuraitis, alias Stanley Slesure, was named in a United States Commissioner's complaint, Number 20013, all charged with a violation of Sections 281, 306, 307, and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934.

(14) *United States vs. Louis Kaplan*, Edward R. Dewes, Victor Raubunas, Joseph F. Cole, Louis Pregenzer, Lincoln Rankin, and Ralph Bogush. D. C. Number 31591. On May 19, 1939, the above indictment was returned by the Grand Jury, and on June 5, 1939, the defendant, Lincoln Rankin, entered a plea of guilty, and the defendants, Louis Kaplan, Edward R. Dewes, Victor Raubunas, Joseph F. Cole, and Louis Pregenzer entered pleas of not guilty. This indictment is still pending.

150 (15) *United States vs. Frank Hodorowicz*, Mike Hodorowicz, Peter Hodorowicz, and Clem Dowiat. In the United States District Court for the Northern District of Illinois. D. C. Number 31013. This indictment was returned on June 3, 1938, and charged the defendants with a violation of Section 201, LTA 1934, and Section 1181 of Title 26, U. S. C. A. A trial was had on February 2, 1939. A Motion for Directed Verdict as to Frank and Peter Hodorowicz was sustained on that date. A verdict of guilty as to Mike Hodorowicz and Clem Dowiat was en-

tered on that date, and the defendants sentenced to serve nine months, on March 20, 1939.

(16) United States *vs.* Frank Hodorowicz and Clem Dowiat. D. C. Number 31014. This indictment was returned on June 3, 1938, and charged a violation of Section 201, LTA 1934, and Section 1181 of Title 26, U. S. C. A. The defendants were convicted on February 3, 1939, and on March 20, 1939, the defendant, Frank Hodorowicz, was sentenced to serve one year and one day, and Peter Hodorowicz and Clem Dowiat were sentenced to serve nine months, to run concurrently with the sentence imposed in D. C. Number 31013.

(17) United States *vs.* Emil H. Beisner, Edward Farber, Adam Widzes, and George Neiss. Number 19788. Before the Commissioner. On November 18, 1937, a complaint was filed against the above defendants, charging a violation of Sections 281, 306, 307, and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934. The defendants were arraigned on November 19, 1937, and the cause was continued to November 24, 1937, then to December 2, 1937, then to December 9, 1937, when an Order was entered holding all defendants to the District Court to await the action of the Grand Jury.

The October Grand Jury returned a No True Bill as to Leo Duthorn, Edward Farber, George Neiss, and 151 Adam Widzes. On November 1, 1938, the October

Grand Jury returned an indictment against Emil H. Beisner, Edward R. Dewes, and Victor Raubunas, charging a violation of Sections 281, 261, 193, 303, 306, 307, and 1181 of Title 26, U. S. C. A.; Section 201, LTA 1934, and Section 88 of Title 18, U. S. C. A. Case Number 31201.

(18) United States *vs.* Emil H. Beisner, Edward R. Dewes, Leo Duthorn, Edward Farber, George Neiss, Victor Raubunas, and Adam Widzes. D. C. Number 31502. This indictment was returned April 21, 1939, and charged a violation of Sections 281, 261, 193, 303, 306, 307, and 1181 of Title 26, U. S. C. A., and Section 201, LTA 1934, and Section 88, Title 18, U. S. C. A.

(19) United States *vs.* Stanley Slesuraitis, alias Stanley Slesur, Stanley Wasielewski, *et al.* D. C. Number 31244. On December 9, 1938, an indictment was returned, charging the above defendants with a violation of Sections 281, 261, 193, 303, 306, 307, and 1181 of Title 26, U. S. C. A.; Section 201, LTA 1934, and Section 88, of Title 18, U. S. C. A. On March 31, 1939, Stanley Slesuraitis entered a

plea of guilty, and on June 30, 1939, he received a sentence of four years, to run concurrently with the sentence imposed in D. C. Numbers 30992 and 31257, and the sentence imposed by Judge Robert C. Butzell on April 4, 1939, at Terre Haute, Indiana.

(20) *United States vs. Terrence J. Druggan, Harold C. Hayes, A. J. Schanfarber, James J. Cullen, Sr., John Martin, and Gambrinus Company, Inc., a Corporation.* D. C. Number 31746. On August 9, 1939, an indictment was returned, charging the above defendants with a violation of Section 88 of Title 18, U. S. C. A.

152 (21) *United States vs. Louis Nuzzo, alias Louis Nuzzio, alias Louis Spino, alias Louis Pero, alias Louis Russo, John Jursich, Stanley Bronkowski, alias Stanley Cook, alias S. Cook, Dominic Guastello, alias John Walters, alias Dominic J. Guastello, Charles Banks, alias Fife, and Joseph Severino.* D. C. Number 30994. On June 1, 1938, an indictment was returned, charging the above defendants with a violation of Sections 281, 261, 193, 303, 306, 307, and 1181 of Title 26, U. S. C. A.; Section 201 LTA of 1934, and Section 38, Title 18, U. S. C. A.

Question (d) What are the dates, entitlements, and the kind and character of certain questions, matters, causes, and proceedings which were brought before such officer or officers in their official capacity and in which it was intended the decision and action of said officer or officers was to be influenced?

Answer: See Answer to Question (c).

Question (e) What actions were said officer or officers induced to do and what acts were they induced to omit to do in violation of his or their lawful duty?

Answer: In the cases hereinabove enumerated, the defendant, Daniel D. Glasser, failed to honestly, properly, and dutifully represent the Government of the United States, in that he failed to present to the United States Commissioner and the various Judges of the United States District Court hearing said causes, and the Grand Juries impaneled by the District Court, certain evidence in his possession. That he refrained from presenting to the United States Commissioner, the Grand Juries, and the Judges of said United States District Court, sufficient evidence in his possession, necessary to be presented for proper and just disposition of said causes. That the said Daniel D. Glasser accepted money and other things of value to influence his official action and conduct.

153 Question (a) appearing on page 2 under Title "Paragraphs 15 to 32 inclusive":

In what matters, causes and proceedings as to titles, cause numbers and descriptions did the defendants solicit persons to pay money?

Answer: All of the matters, causes and proceedings set forth in the answer to Question (c).

Question (b) appearing under the same title:

What defendants made the solicitations, and what persons were solicited, and on what dates, at what places, and in what amounts were these persons solicited?

Answer: The defendants, Kretske, Kaplan, and Horton made the solicitations, and the persons named as defendants in the cases enumerated in the answer to question (c) were the persons solicited. The dates were approximately before commencement, during pendency and after termination of the particular cases. The place was Chicago, Illinois; and the amounts ranged from the sum of \$25. to the sum of \$1500. Weekly payments were made in the amount of \$430. by Kaplan to Glasser and Kretske for protection and immunity from prosecution.

Question set forth, but not numbered, under Title "Paragraphs 17 to 20 inclusive" appearing on page 2:

What is the character of the alleged fraud which it is contended the defendant, Norton I. Kretske, was to commit?

Answer: The character of the fraud Norton I. Kretske did commit was as follows: First, to violate the oath that he took on entering upon the discharge of his duties as an Assistant United States Attorney, to faithfully obey and carry out the laws of the United States and to prosecute all offenders of those laws which he, as an Assistant United States Attorney, was delegated to prosecute, or aid and assist other Assistant United States Attorneys delegate to prosecute; Second, to corruptly and feloniously ask certain persons who had offended against the laws of the United States to pay him certain sums of money to be used to corruptly influence an Assistant United States Attorney, employed, delegated, and assigned to prosecute said law violators, for and on behalf of the United States; Third, to corruptly fail to prosecute certain cases delegated and assigned to him by the United States Attorney for prosecution.

154

Count Two.

The answers to the Questions set forth under Count 2 are identical with the Answers set forth to the questions under Count 1.

The following Answers are made to the Questions set forth by the defendant, Daniel D. Glasser:

Count One.

Question 1. State the names of "the persons" alleged in paragraph 14 to be "acting for and on behalf of the United States".

Answer: The names of "the persons" alleged in paragraph 14 to be "acting for and on behalf of the United States" are the defendants, Norton I. Kretske and Daniel D. Glasser.

Question 2. Who are the "officers" mentioned in paragraph 14 whom the defendant Glasser and the other defendants conspired to promise, offer, cause and procure to be promised and offered money and other things of value?

Answer: The officers mentioned in paragraph 14 whom the defendants conspired to promise, offer, cause and procure to be promised and offered money and other things of value were Daniel D. Glasser and Norton I. Kretske.

Question 3. When and where was the conspiracy charged in Count 1 entered into by the defendant Glasser and who were the then members of the conspiracy?

Answer: On or about April 1, 1935, at Chicago, Illinois. The conspiracy was first entered into by Norton I. Kretske and Daniel D. Glasser. Norton I. Kretske and Daniel D. Glasser were the first persons to bring the unlawful agreement into existence.

155 Question 4. State the nature, time, place, and amount of each promise and offer made to an officer of the United States and by whom and to whom each such promise and offer was made.

Answer: See the names of persons in the cases hereinabove enumerated in Answer to Question (c) under paragraphs 14 and 16 of the Demand by Norton I. Kretske. The persons who made the solicitations are the defendants, Kretske, Kaplan, and Horton. The solicitations were made to the persons named as defendants in the afore-

mentioned paragraph. The amounts of each promise and offer made to an officer of the United States range from the sum of \$25.00 to \$1500.00, and the evidence will show also a payment of \$430.00 each week for approximately one year by the defendant Kaplan to the defendants Kretske and Glasser for protection and immunity from prosecution.

Question 5. State the time, place, amount, and circumstances of each payment of money to the defendant Glasser by the persons named in paragraph 12 of the indictment whom it is alleged in paragraph 37 "did pay money to the defendants".

Answer: (1) The defendant, Norton I. Kretske, delivered a part of the \$800.00 he had received from Frank Hodorowicz on or about January 15, 1937, to the defendant, Daniel D. Glasser, in the City of Chicago, County of Cook, and State of Illinois.

(2) The defendant, Louis Kaplan, paid the sum of \$430.00 a week to the defendants, Daniel D. Glasser and Norton I. Kretske, for a period of approximately one year for protection against prosecution for operating certain stills.

Question 6. State the names of the persons referred to in paragraphs 28, 29, and 32 as "certain persons," "persons," and "said persons".

Answer: The "certain persons," "persons," and "said persons" referred to in paragraphs 28, 29, and 32 are the particular individuals who are named as defendants in certain cases enumerated in the Answer to Question (c) hereinabove set forth.

156 Question 7. What is the fraud the officer or officers of the United States and persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United States was to commit and aid in committing and collude in committing?

Answer: The character of the fraud Daniel D. Glasser did commit was as follows: First, to violate the oath that he took on entering upon the discharge of his duties as an Assistant United States Attorney, to faithfully obey and carry out the laws of the United States and to prosecute all offenders of those laws which he, as an Assistant United States Attorney, was delegated to prosecute, or aid and assist other Assistant United States Attorneys delegated to prosecute; Second, to corruptly fail to prosecute cer-

tain cases delegated and assigned to him by the United States Attorney for prosecution.

Question 12: When, where, and by whom was any "certain sum of money" promised to be paid or offered to the defendant Glasser?

Answer: See Answer to Question 5.

Question 13a. In what causes, matters, and proceedings, is it claimed the defendant Glasser made decisions so that certain persons would not be charged with a violation of the laws of the United States?

Answer: United States *vs.* Joseph Katzen. United States *vs.* Dominick Curbis and Gust Lazuka. United States *vs.* Walter Kwiatowski. United States *vs.* Peter Hodorowicz. United States *vs.* Walter Halevan, alias Walter Hort. United States *vs.* Leo Duthorn. United States *vs.* George Neiss. United States *vs.* Adam Widzes. United States *vs.* Mae Jurkas. United States *vs.* Joseph Severino. United States *vs.* Ned Bakes. United States *vs.* Terrence J. Druggan, Harold C. Hayes, A. J. Schanfarber, James J. Cullen, Sr., John Martin, and Gambrinus Company, Inc., a Corporation. United States *vs.* Louis Kaplan.

157 Question 13(b). In what causes, matters, and proceedings were persons found not guilty and discharged because of any unfaithful performance of duty by the defendant Glasser?

Answer: The Answer to this Question can be found in the cases enumerated in the Answer to Question (c) hereinabove mentioned.

Question 13(c). In what causes, matters, and proceedings did the defendant commit a fraud on the United States by making legal motions to dismiss charges against certain persons?

Answer: The defendant, Daniel D. Glasser, committed a fraud on the United States by making motions to dismiss charges against certain of the defendants mentioned in the Answer to Question (c).

Question 13(d). In what causes, matters, and proceedings was information withheld from the Grand Jury?

Answer: United States *vs.* Louis Kaplan. United States *vs.* Peter Hodrowicz. United States *vs.* Walter Halevan, alias Walter Hort. United States *vs.* Leo Vitale. United States *vs.* Leo Duthorn. United States *vs.* Edward Farber. United States *vs.* George Neiss. United States *vs.*

Adam Widzes. See also the Answer to Question (c) of the Demand of Norton I. Kretske.

Question 13(e). In what causes, matters, and proceedings did the defendant Glasser give confidential information to the defendants?

Answer: The defendant Glasser gave confidential information to Frank Hodorowicz, Mike Hodorowicz, Norton I. Kretske, Anthony Horton, Louis Kaplan, and to one of the defendants in the case of *United States vs. William J. Workman, et al.*

Question 13(f). In what causes, matters, and proceedings did the defendant Glasser unduly delay and prolong the proceedings?

Answer: Every case mentioned in the Answer to Question (c) hereinbefore mentioned.

158 Question 15. Is the Louis Kaplan named in paragraph 12 the same Louis Kaplan named as a defendant in this indictment?

Answer: The Louis Kaplan named in paragraph 12 is the same Louis Kaplan named as the defendant in this indictment.

Count Two.

The Answers to the Questions set forth under Count 2 are identical with the Answers set forth to the questions under Count 1.

William J. Campbell,
United States Attorney for the Northern District of Illinois.

Dated at Chicago, Illinois, this 28th day of December, A. D. 1939.

159 Endorsed: In the District Court of the United States. * * (Caption—31825) * * Bill of Particulars. William J. Campbell, United States Attorney.

164 And afterwards, to wit, on the 23rd day of January A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered
Jan. 23,
1940. 165 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—31825) * *

ORDER.

This cause coming on to be heard upon the petition of Alfred E. Roth for reconsideration of his demurrer filed to the indictment herein:

It is hereby ordered that the said petition be set down for hearing on January 29th, 1940 at 10 A. M. at The Federal Court House, Chicago, Ill.

Enter:

Patrick T. Stone,
Judge.

January 23, 1940.

Filed
Jan. 27,
1940. 176 And on, to wit, the 27th day of January A. D. 1940, came the defendant Norton I. Kretske by his attorneys and filed in the Clerk's office of said Court certain Petition for More Specific Bill of Particulars in words and figures following, to wit:

177 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—31825) * *

PETITION FOR MORE SPECIFIC BILL OF
PARTICULARS.

To the Honorable Patrick T. Stone, Judge Presiding:

Now again comes your petitioner, Norton I. Kretske, one of the defendants herein, and respectfully represents unto your Honor that on the 29th day of November, 1939, he filed in this cause his petition for a bill of particulars of the matters, things and happenings contained in the indictment herein; that of the particulars requested, said petition on page 2 under the designation "paragraphs 15 to 32 inclusive" asked the following question:

(b) What defendants made the solicitations, and what persons were solicited, and on what dates, at what places, and in what amounts were these persons solicited?
and this Honorable Court entered its order upon said pe-

tition on the 20th day of December, 1939, and particularly in reference to said question as follows:

"It is therefore ordered that William J. Campbell, United States Attorney, be and he is hereby directed to file answers to the following questions set forth in the petition of Norton I. Kretske, within five days from date hereon:

Paragraphs 15 to 32 inclusive. Question (b) appearing on page 2."

and on the 28th day of December, 1939, the said William J. Campbell, United States Attorney, as aforesaid, 178 pursuant to the order of this Honorable Court filed answer to said question, on page 11, as follows:

"Question (b) appearing under the same title:

What defendants made the solicitations, and what persons were solicited, and on what dates, at what places, and in what amounts were these persons solicited?

Answer: The defendants, Kretske, Kaplan, and Horton made the solicitations, and the persons named as defendants in the cases enumerated in the answer to question (c) were the persons solicited. The dates were approximately before commencement, during pendency and after termination of the particular cases. The place was Chicago, Illinois; and the amounts ranged from the sum of \$25.00 to the sum of \$1500. Weekly payments were made in the amount of \$430 by Kaplan to Glasser and Kretske for protection and immunity from prosecution."

Your petitioner respectfully represents unto your Honor that the answer to this question as filed by the Government is not only not in conformity with the order of this Honorable Court, but is as general as the allegations of the indictment and so vague, indefinite and uncertain that this defendant is still unable to properly prepare his defense in this regard; that your petitioner further respectfully represents that in asking the question referred to, he desired particulars in each and every instance as to which defendant made a specific solicitation and what person was solicited, the date when the solicitation was made and what place and the amount so solicited, and your petitioner believes that this Honorable Court in ordering the answer to this question reasonably expected that the Government would furnish by its answer each and every instance when it is contended there were any solicitation of money and the full particulars as to each occasion.

179 Your petitioner further respectfully represents unto your Honor that he did not have a preliminary hearing touching the matters set forth in the indictment herein and that he has no means of obtaining the information requested in this petition excepting through and by means of a bill of particulars; that he is absolutely innocent of the charges offered in the indictment and each count thereof, and expects upon the trial of this cause to prove and maintain his innocence; that your petitioner has been advised by his counsel that they cannot properly represent him nor can your petitioner receive a fair and impartial trial, nor is it safe for him to go to trial upon the accusations made against him in said indictment until adequate preparation has been made to meet the evidence which will or may be offered against him, and that they cannot possibly make any preparation whatever to meet such evidence as will or may be offered against him upon the trial of this cause and in support of the accusations made in the indictment unless and until your petitioner obtains such information as is requested in this petition and which the allegations in said indictment do not furnish;

That unless the prosecution is directed to furnish the particulars specified in this petition, there will be no means available now or hereafter to identify the alleged conspiracy charged in said indictment and each count thereof, and for want of such means said indictment furnishes no protection to your petitioner against other and further indictments for the same alleged offenses, nor could any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses.

180 Wherefore, your petitioner respectfully requests that an order be entered requiring the Government to file with the Clerk of this Court, within a reasonable time to be fixed by the Court, a more specific bill of particulars of the matters and things requested by your petitioner under Question (b)—paragraphs 15 to 32 inclusive—page 2 of the petition of your petitioner for a bill of particulars heretofore filed herein on the 29th day of November, 1939.

Norton I. Kretske,
Petitioner.

State of Illinois }
 County of Cook } ss.

Norton I. Kretske, being first duly sworn, upon oath deposes and says that he is one of the defendants in the above entitled cause; that he has read the above and foregoing petition for more specific bill of particulars by him subscribed; that he knows the contents thereof, and that the allegations therein contained are true.

Norton I. Kretske.

Subscribed and sworn to before me this 25th day of January, 1940.

(Seal)

Rose F. Lee,
Notary Public.

181 And afterwards, to wit, on the 29th day of January A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered
 Jan. 29,
 1940.

182 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

Monday January 29, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day comes the defendant Norton I. Kretske by his attorney and enters his motion for a more specific bill of particulars which motion is denied to which ruling of the Court the defendant by his attorney duly excepts.

187 And afterwards, to wit, on the 29th day of January A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered
Jan. 29,
1940.

188 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

Monday January 29, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This cause coming on to be heard on the petition of defendant Alfred E. Roth for reconsideration of his demurrer after arguments of counsel and due deliberation by this Court said petition is denied to which ruling of the Court the defendant duly excepts.

It is further ordered that the petition of Alfred E. Roth for a severance be and the same is overruled to which ruling of the Court the defendant duly excepts.

Entered
Jan. 29,
1940.

189 And afterwards, to wit, on the 29th day of January A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

190 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

Monday January 29, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day comes the defendant Daniel D. Glasser by his attorney and enters his motion to strike the Bill of Particulars filed in said cause after arguments of counsel said motion is denied to which ruling of the Court the defendant by his attorney duly excepts.

Whereupon the said defendant by his attorney enters his motion for severance which motion is denied to which ruling of the Court the defendant by his attorney duly excepts.

It Is Further Ordered that part of the petition on page 5 which refers to ill feeling between Joseph Harrington the Judge and District Attorney be and the same is hereby stricken.

191 And afterwards, to wit, on the 29th day of January A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered
Jan. 29,
1940.

192 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

Monday January 29, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day comes the United States by the United States Attorney come also the defendants Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton alias Tony Horton and Louis Kaplan in their own proper persons and being arraigned upon the indictment filed herein against them each defendant pleads not guilty thereto it is

Ordered that this cause be and the same is hereby set for trial February 5, A. D. 1940.

174 And on, to wit, the 29th day of January A. D. 1940, came the defendant by his attorneys and filed in the Clerk's office of said Court a certain APPEARANCE in words and figures following, to wit:

Filed
Jan. 29,
1940.

175 DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

I hereby enter the appearance of Daniel D. Glasser, defendant, and myself as associate attorney in the above-entitled cause.

Wm. Scott Stewart,
Defendant's Attorney.

Endorsed: District Court of the United States. • • (Caption—31825) • • Appearance. Filed Jan. 29, 1940, Hoyt King, Clerk. Wm. Scott Stewart, 77 W. Washington St., Defendant's Attorney. Cen. 1746.

Filed
Feb. 5,
1940.

193 And on, to wit, the 5th day of February A. D. 1940, came the defendant by his attorneys and filed in the Clerk's office of said Court a certain APPEARANCE in words and figures following, to wit:

194 DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

I hereby enter my appearance as associate counsel for the defendant, Alfred E. Roth, in the above-entitled cause.
Cassius Poust,
Defendant's Attorney.

Endorsed: District Court of the United States. • •
(Caption—31825) • • Appearance. Filed Feb. 5, 1940.
Hoyt King, Clerk.

Entered
Feb. 5,
1940.

203 And afterwards, to wit, on the 5th day of February A. D. 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

204 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

Monday February 5, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day comes the defendant Norton I. Kretske and enters his motion for a continuance which motion is overruled to which ruling of the Court the defendant duly excepts it is Ordered by the Court that Bernard J. McDonnell be and he is hereby appointed as Attorney for defendant Norton I. Kretske.

205 And afterwards, to wit, on the 5th day of February A. D. 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

206 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

Entered
Feb. 5,
1940.

Monday February 5, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

It Is Ordered by the Court that this cause be and the same is hereby continued for trial to February 6, A. D. 1940.

212 And afterwards, to wit, on the 6th day of February A. D. 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered.
Feb. 6,
1940.

213 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

Tuesday February 6, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

It is Ordered that the order heretofore entered appointing Bernard J. McDonnell as Attorney for Norton I. Kretske be and the same is hereby vacated and set aside and it is

Ordered that William Scott Stewart be and he is hereby appointed as attorney for said defendant.

Filed
Feb. 23,
1940. 214 And on, to wit, the 23rd day of February A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Motion to Exclude the Proposed Testimony of Alexander Campbell in words and figures following, to wit:

215 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

MOTION TO EXCLUDE THE PROPOSED TESTIMONY OF ALEXANDER CAMPBELL.

Now come all of the defendants herein jointly and severally by their respective counsel and move the court to exclude the proposed testimony of one, Alexander Campbell, offered by the prosecution on its behalf on the following grounds based upon the opening statement of the prosecution stating the proposed testimony of the said Alexander Campbell:

1. That the said proposed testimony is not a declaration made in pursuance of the common object of the alleged conspiracy.

2. That the said proposed testimony is not a part of the execution of the alleged plan of the alleged conspiracy.

3. That the fact that the declarant is indicted adds nothing to the competence of his alleged declaration.

4. That the fact that one alleged conspirator tells another something allegedly relevant to the alleged conspiracy does not make the alleged declaration competent.

5. That mere conversation of an alleged conspirator with another does not implicate him or others in a conspiracy with others not independently shown to be a party to the alleged conspiracy.

6. That no independent proof of the alleged conspiracy has been offered.

7. That the proposed testimony is concerning a transaction not related to the alleged conspiracy.

216 8. That the Bill of Particulars setting forth the causes, persons and places involved so that the defendants might be prepared to meet the particulars alleged, does not set forth the case of the United States versus Edward Wroblewski and William Wroblewski in the Northern District of Indiana.

9. That the proposed testimony is prejudicial and will not tend to prove any issue in the above cause.

Wm. Scott Stewart,
George F. Callaghan,
Henry L. Balaban,
Attorney for Anthony J. Horton.
Edward J. Hess,
• *Attorney for Kaplan.*
Cassius Poust,
Attorney for Defendants.

220 And afterwards, to wit, on the 26th day of February A. D. 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered
Feb. 26,
1940.

221 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

Monday February 26, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day again comes the United States by the United States Attorney come also the defendants Daniel D. Glasser, Norton I. Kretske, Anthony Horton alias Tony Horton, Alfred E. Roth and Louis Kaplan in their own proper persons and the Jury heretofore empaneled herein for the trial of said cause also come and thereupon at the close of the Government's evidence each defendant by his attorney enters his motion for a directed verdict of not guilty which motion is overruled to which ruling of the Court the defendants by their attorneys duly except.

222 And afterwards, to wit, on the 27th day of February A. D. 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable District Judge appears the following entry, to wit:

Entered 223 IN THE DISTRICT COURT OF THE UNITED STATES.
Feb. 27, 1940. * * (Caption—31825) * *

Tuesday, February 27, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day come the defendants by their attorneys and enter their motion for a rule on the United States Attorney to elect whereupon the United States Attorney elects to stand on count 2 of the indictment and on motion of the United States Attorney it is

Ordered that this cause be and the same is hereby dismissed as to count one of the indictment.

Entered 227 And afterwards, to wit, on the 5th day of March,
Mar. 5, 1940. A. D. 1940, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge appears the following entry, to wit:

228 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—31825) * *

Tuesday, March 5, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day again comes the United States by the United States Attorney comes also the defendants Daniel D. Glasser, Norton I. Kretschke, Alfred E. Roth, Anthony Horton alias Tony Horton and Louis Kaplan in their own proper persons also come and the Jury heretofore empaneled herein for the trial of said cause also come and thereupon at the close of all the evidence the defendant Alfred E. Roth and all other defendants by their attorneys enter herein their motion for a directed verdict which motion is overruled and denied and the usual hour of adjournment having arrived it is

Ordered the said jury be and they are hereby permitted to separate.

232 And afterwards, to wit, on the 8th day of March, A. D. 1940, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge appears the following entry, to wit: Ente
Mar.
1940.

233 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

Friday, March 8, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day comes the United States by the United States Attorney comes also the defendants in their own proper persons and the Jury heretofore empaneled herein for the trial of said cause also come and render their verdict and upon their oath do say "We the Jury find the defendants Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton alias Tony Horton and Louis Kaplan guilty as charged in the indictment" whereupon on motion of the defendants' attorneys that the Jury be polled the Clerk inquired of each and every juror "was this and is this your verdict" to which inquiry each and every juror replied in the affirmative.

Whereupon each defendant by his attorney enters his motion for a finding of not guilty and for a new trial in said cause which motion are entered and continued to April 8, A. D. 1940.

Bonds heretofore filed herein by said defendants are to remain in full force and effect.

234 And afterwards, to wit, on the 8th day of April, A. D. 1940, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge appears the following entry, to wit:

Entered
Apr. 8,
1940.

235 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

Monday, April 8, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day again comes the United States by the United States Attorney come also the defendants Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton alias Tony Horton and Louis Kaplan in their own proper persons and it is

Ordered by the Court that the motion for finding of not guilty as to each defendant and the motion for a new trial be and the same is hereby continued to April 22, A. D. 1940.

Entered
Apr. 22,
1940.

236 And afterwards, to wit, on the 22nd day of April, A. D. 1940, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge appears the following entry, to wit:

237 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

Monday, April 22, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day again comes the United States by the United States Attorney come also the defendants Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton, alias Tony Horton and Louis Kaplan in their own proper persons and thereupon this cause coming on to be heard on the defendants' motion for a finding of not guilty and for a new trial in said cause after arguments of counsel it is

Ordered that this cause be and the same is hereby continued for disposititon to April 23, A. D. 1940.

238 And afterwards, to wit, on the 23rd day of April, A. D. 1940, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge appears the following entry, to wit:

Entered
Apr. 23,
1940.

239 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

Tuesday, April 23, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

This day again comes the United States by the United States Attorney comes also the defendants Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton, alias Tony Horton and Louis Kaplan in their own proper persons also come and it is

Ordered by the Court that the motions for finding of not guilty as to each defendant and the motions for a new trial in said cause be and the same is hereby denied to which ruling of the Court the defendant's by their attorneys duly except and on motion of the attorney for the defendant Daniel D. Glasser it is

Ordered that leave be and the same is hereby given said defendant to file three affidavits and leave be and the said is hereby given the defendant Alfred E. Roth to file two affidavits and leave be and the same is hereby given the defendants to file motion for a directed verdict and motions in arrest of judgment.

Entered
Apr. 23,
1940.

252 And afterwards, to wit, on the 23rd day of April, A. D. 1940, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge appears the following entry, to wit:

253 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

ORDER.

This day comes the United States by the United States Attorney, comes also the defendants, Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton, alias Tony Horton, and Louis Kaplan in their own proper persons and file herein their motions for a new trial in said cause, and thereupon this cause coming on to be heard on the defendants' motions heretofore entered herein for a new trial in said cause after arguments of counsel and due deliberations by the Court, said motions are overruled and a new trial denied, to which ruling of the Court the defendants duly except, whereupon the defendant, Alfred E. Roth, enters herein his motion for a judgment of not guilty, notwithstanding the verdict, which motion is also overruled, to which ruling of the Court the defendant, Alfred E. Roth, duly excepts, and whereupon the defendants enter herein their motion in arrest of judgment, which motion is also overruled, to which ruling of the Court the defendants duly except, and the defendants being asked by the Court if they have anything to say why the sentence and judgment of the Court should not be pronounced upon them and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty so rendered by the jury aforesaid that the defendants, Daniel D. Glasser, Norton I. Kretske, and Louis Kaplan, be committed in the custody of the Attorney General to be confined in a
254 United States Penitentiary for a period of fourteen months; that the defendant, Alfred E. Roth, forfeit and pay to the United States a fine in the sum of \$500.00; that the defendant Anthony Horton alias Tony Horton, be committed in the custody the Attorney General to be

confined in a United States Penitentiary for a period of one year and one day and sentence as to the defendant, Anthony Horton, alias Tony Horton is suspended and the said defendant is placed upon probation for a period of two years.

Patrick T. Stone,
United States District Judge.

Dated at Chicago, Illinois, this 17th day of May, A. D. 1940, as of April 23, 1940.

255 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA

Filed
Apr. 2
1940.

For the Northern District of Illinois,
Eastern Division.

The United States of America,
vs.
Daniel D. Glasser, et al. } No. 31825.

NOTICE OF APPEAL AS TO DEFENDANT,
NORTON I. KRETSKE.

Name and address of appellant:

Norton I. Kretske, 1225 Newberry Ave., Chicago, Illinois.

Name and address of attorney for appellant:

Norton I. Kretske, 1225 Newberry Ave., Chicago, Illinois.

Offense:

Violatiton of Section 88, Title 18 United States Code (conspiring to defraud the United States).

Date of Judgment:

April 23rd, 1940.

Brief description of judgment or sentence:

Sentenced to the custody of the Attorney General for confinement in a penitentiary for 14 months.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals, for the 7th circuit, from the judgment above mentioned on the ground set forth below.

Dated: April 26th, 1940.

Norton I, Kretske,
Appellant.

1.

The court erred in denying the motion to quash the indictment.

2.

The indictment fails to sufficiently allege an offense under the laws and constitution of the United States.

3.

The court erred in overruling the demurrer to the indictment.

4.

There is a fatal variance between the allegations of the indictment and the proof.

5.

The defendant was deprived of a trial by jury as guaranteed by the laws and constitution of the United States.

6.

The court erred in admitting evidence not within the scope of the bill of particulars to the surprise and prejudice of the defendant.

7.

The court erred in admitting incompetent evidence to the prejudice of the defendant.

8.

The court erred in denying defendant's motion to strike and exclude testimony.

9.

The court erred in restricting and limiting the cross-examination of the witnesses for the government to the prejudice of the defendant.

10.

The court erred in permitting the prosecution to ask improper questions of the witnesses for the government and the defense to the prejudice of the defendant.

11.

The court erred in denying the defendant's motion for a directed verdict of not guilty at the close of all the evidence.

12.

The evidence is insufficient to sustain the verdict of guilty.

13.

The court erroneously instructed the jury as to the law of the case.

14.

The court erred in refusing to give the instructions tendered by the defendant.

15.

The court erred in giving the tendered instructions of the defendant in a modified form.

16.

The court erred in denying the motion for a finding of not guilty notwithstanding the verdict of guilty.

17.

The court erred in denying the motion for a new trial.

18.

The court erred in denying the motion in arrest of judgment.

19.

The court erred in pronouncing judgment.

20.

All the foregoing grounds of appeal separately and severally considered deprived the defendant of a fair and impartial trial as guaranteed to him by the laws and constitution of the United States and particularly the fifth and sixth amendments thereto.

Norton I. Kretske,
Appellant.

Received a copy of the foregoing notice of appeal this
day of April, A. D. 1940.

U. S. Attorney.

Filed
Apr. 26,
1940.

259 And on, to wit, the 26th day of April, A. D. 1940, came Daniel D. Glasser and Norton I. Kretske and filed in the Clerk's office of said Court Two Notices of Appeal in words and figures following, to wit:

257 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA

For the Northern District of Illinois,
Eastern Division.

The United States of America, }
vs. } No. 31825.
Daniel D. Glasser, *et al.*

NOTICE OF APPEAL AS TO DEFENDANT,
DANIEL D. GLASSER.

Name and address of appellant:

Daniel D. Glasser, 6125 North Washtenaw Ave., Chicago, Illinois.

Name and address of attorney for appellant:

Daniel D. Glasser, 135 So. La Salle Street, Chicago, Illinois.

Offense:

Violation of Section 88, Title 18 United States Code (conspiring to defraud the United States).

Date of Judgment:

April 23rd, 1940.

Brief description of judgment or sentence:

Sentenced to the custody of the Attorney General for confinement in a penitentiary for 14 months.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals, for the 7th Circuit, from the judgment above mentioned on the grounds set forth below.

Daniel D. Glasser,
Appellant.

Dated: April 26th, 1940.

258

Grounds of Appeal.

1.

The court erred in denying the motion to quash the indictment.

2.

The indictment fails to sufficiently allege an offense under the laws and constitution of the United States.

3.

The court erred in overruling the demurrer to the indictment.

4.

There is a fatal variance between the allegations of the indictment and the proof.

5.

The defendant was deprived of a trial by jury as guaranteed by the laws and constitution of the United States.

6.

The court erred in admitting evidence not within the scope of the bill of particulars to the surprise and prejudice of the defendant.

7.

The court erred in admitting incompetent evidence to the prejudice of the defendant.

8.

The court erred in denying defendant's motion to strike and exclude testimony.

9.

The court erred in restricting and limiting the cross-examination of the witnesses for the government to the prejudice of the defendant.

10.

The court erred in permitting the prosecution to ask improper questions of the witnesses for the government and the defense to the prejudice of the defendant.

11.

The court erred in denying the defendant's motion for a directed verdict of not guilty at the close of all the evidence.

12.

The evidence was insufficient to sustain the verdict of guilty.

13.

The court erroneously instructed the jury as to the law of the case.

14.

The court erred in refusing to give the instructions tendered by the defendant.

15.

The court erred in giving the tendered instructions of the defendant in a modified form.

16.

The court erred in denying the motion for a finding of not guilty notwithstanding the verdict of guilty.

17.

The court erred in denying the motion for a new trial.

18.

The court erred in denying the motion in arrest of judgment.

19.

The court erred in pronouncing judgment.

20.

All the foregoing ground of appeal separately and severally considered deprived the defendant of a fair and impartial trial as guaranteed to him by the laws and constitution of the United States and particularly the fifth and sixth amendments thereto.

Daniel D. Glasser,
Appellant.

Received a copy of the foregoing notice of appeal this 26th day of April, 1940.

.....
U. S. Attorney.

260 And on, to wit, the 27th day of April, A. D., 1940, came the defendant Alfred E. Roth and filed in the Clerk's office of said Court certain Notice of Appeal in words and figures following, to wit:

Filed
Apr. 27,
1940.

201 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

The United States of America, }
vs. } No. 31825.
Daniel D. Glasser, *et al.*

NOTICE OF APPEAL AS TO DEFENDANT,
ALFRED E. ROTH.

Name and address of appellant:

Alfred E. Roth, 5528 N. Kenmore Avenue, Chicago, Illinois.

Name and address of attorney for appellant:

Alfred E. Roth, 10 N. Clark Street, Chicago, Illinois.

Offense:

Violation of Section 88, Title 18, United States Code (conspiring to defraud the United States).

Date of Judgment:

April 23, 1940.

Brief description of judgment and sentence:

To pay a fine of five hundred dollars.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the judgment above mentioned on the grounds set forth below.

Alfred E. Roth,
Appellant.

Dated: April 26, 1940.

1.

The court erred in denying the motion to quash the indictment.

2.

The indictment fails to sufficiently allege an offense under the laws and constitution of the United States.

3.

The court erred in overruling the demurrer to the indictment.

4.

There is a fatal variance between the allegations of the indictment and the proof.

5.

The defendant was deprived of a trial by jury as guaranteed by the laws and constitution of the United States.

6.

The court erred in admitting evidence not within the scope of the bill of particulars to the surprise and prejudice of the defendant.

7.

The court erred in admitting incompetent evidence to the prejudice of the defendant.

8.

The court erred in denying defendant's motion to strike and exclude testimony.

9.

The court erred in restricting and limiting the cross examination of the witnesses for the government to the prejudice of the defendant.

10.

The court erred in permitting the prosecution to ask improper questions of the witnesses for the government and the defense to the prejudice of the defendant.

11.

The court erred in denying defendant's motion for a directed verdict of not guilty at the close of all the evidence.

12.

The evidence is insufficient to sustain the verdict of guilty.

13.

The court erroneously instructed the jury as to the law of the case.

14.

The court erred in refusing to give the instructions tendered by the defendant.

15.

The court erred in giving the tendered instructions of the defendant in a modified form.

16.

The court erred in denying the motion of the defendant for a finding of not guilty notwithstanding the verdict of guilty.

17.

The court erred in denying the motion of the defendant for a new trial.

18.

The court erred in denying the motion of the defendant in arrest of judgment.

19.

The court erred in pronouncing judgment.

20.

All the foregoing grounds of appeal separately and severally considered deprived the defendant of a fair and impartial trial as guaranteed to him by the laws and the constitution of the United States and particularly the fifth and sixth amendments thereto.

Alfred E. Roth,
Appellant.

Received a copy of the foregoing notice of appeal this 26th day of April, A. D., 1940.

.....
United States Attorney.

Filed
June 27,
1940.

276 And on, to wit, the 27th day of June, A. D., 1940, came the defendants and filed in the Clerk's office of said Court a Joint and Several Assignment of Errors in words and figures following, to wit:

277 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

THE JOINT AND SEVERAL ASSIGNMENT OF ERRORS OF THE DEFENDANTS, DANIEL D. GLASSER, NORTON I. KRETSKE AND ALFRED E. ROTH.

Now come Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth, defendants in the above entitled cause, in connection with their respective appeals, jointly and severally make the following Assignment of Errors which they allege occurred upon the trial of said cause:

1.

The court erred in denying the defendants' motion to quash the indictment on the following grounds:

- a) That the Grand Jury was illegally constituted.
- b) That the indictment was not properly returned in open court.
- c) That said indictment was filed without the proper order of court directing the receiving and filing of said indictment.

2.

The court erred:

- a) In overruling the respective demurrers of the defendants on the grounds set forth therein, and incorporated by reference thereto as if fully set forth herein.
- b) In overruling the petition of the defendant, Alfred E. Roth, to reconsider and sustain his demurrer.

3.

The Court erred in denying defendant's motion to strike the limitations on the bill of particulars to the prejudice of the defendants.

278

4.

The court erred in denying the defendants' motion for a more specific bill of particulars to the prejudice of the defendants.

5.

The court erred in denying the defendants' motion that the U. S. Attorney be required to elect on which count of the indictment he would proceed to the prejudice of the defendants.

6.

The court erred in denying defendants' Daniel G. Glasser's and Alfred E. Roth's respective petitions for a severance to the prejudice of the defendants.

7.

The court erred:

- a) In denying and overruling the defendant's, Norton I. Kretske's motion for a continuance.

b) In forcing the defendant Norton I. Kretske to trial without counsel of his choice, to the prejudice of the defendants.

8.

The court erred in appointing the employed counsel of defendant Daniel D. Glasser to represent defendant Norton I. Kretske, to the prejudice of the defendants.

9.

The court erred in admitting evidence of acts occurring more than three years prior to the return of the indictment to the prejudice of the defendants.

10.

The court erred in permitting the prosecutor to unfairly and prejudicially infer that defense counsel had connections with well known and notorious violators of the law. Pages B. of E. 124-125.

279

11.

The court erred in permitting the prosecutor to unfairly and prejudicially interrogate the Government witness, Workman, on redirect examination after recross which inferred that Glasser was derelict in his duty as an assistant United States attorney. Page B. of E. 128.

12.

The court erred:

a) In permitting evidence of the case of U. S. *vs.* One Chrysler Sedan on the grounds that it was not part of the alleged plan of the alleged conspiracy. Page B. of E. 138.

b) By flatly overruling the objection to the same in permitting evidence of a wholly independent transaction to be admitted in evidence without the reservation that it be subject to being connected up by the rest of the evidence, thereby holding that the conspiracy had already been established. Page B. of E. 138.

13.

The court erred in permitting the prosecutor by his unfair and highly prejudicial leading questions to lead the Government witness Swanson in changing his testimony while on the witness stand. Page B. of E. 150.

14.

The court made remarks prejudicial to the theory on which the defense was predicated. Page B. of E. 160.

15.

The court erred in denying the motion to strike the answer of Government witness Swanson to the question of the court to the prejudice of the defendants. Page B. of E. 166.

16.

The court erred in permitting the prosecutor to re-examine the government witness Frank Hodorowicz concerning one Albina Zarrarinni to the prejudice of the defendants. Pages B. of E. 248 to 251, inclusive.

280

17.

The court erred in examining the government witness Frank Hodorowicz concerning Frank Miller, which was incompetent, immaterial and irrelevant, to the prejudice of the defendants. Pages B. of E. 251, 252, 254, 255 and 256.

18.

The court erred in denying the defendants the right to show by the government's witness Gilbert that one of the government's investigators in the Kwiatowski case was discharged for taking bribes to the prejudice of the defendants. Pages B. of E. 357-358.

19.

The court erred in permitting the prosecutor to recall Government witnesses Goddard and Bailey to the prejudice of the defendants. Pages B. of E. 417, 588, 660 and 729.

20.

The court erred in his statement of the law of what evidence is required before the Grand Jury. Page B. of E. 419.

21.

The prosecutor, by his remarks, deprived the defense of the right of cross examination free from interference of the prosecutor to the prejudice of the defendants. Page B. of E. 467.

22.

The court erred in denying the motion of the defendants for a mistrial because of the reading to the jury of Exhibit 81 to the prejudice of the defendants. Pages B. of E. 528 and 529.

23.

The court erred:

a) In announcing that Exhibits 81 and 113 were admitted as against the defendant Daniel D. Glasser.

b) And in holding it was for the jury to determine if they were evidence against any one else, to the prejudice of the defendants. Pages B. of E. 529 and 530.

281

24.

The court erred in having the Government's witness, Dewes, repeat his answer to the prejudice of the defendants. Pages B. of E. 541 and 542.

25.

The court, by intervening in the cross-examination of the Government's witness, Dewes, deprived the defendants of their right to a free and unrestricted cross-examination, to the prejudice of the defendants. Pages B. of E. 552 and 554.

26.

The court erred in permitting the Government's witnesses Brantman and Abesketos to testify to alleged conversations had with each other outside the presence of any of the defendants, to the prejudice of the defendants. Pages B. of E. 664, 680 and 682.

27.

The court erred in admitting in evidence the testimony of the Government's witness, Alexander Campbell, for the reasons assigned in the written motion to exclude the proposed testimony of Alexander Campbell, incorporated herein by reference being had thereto; and for the further reasons that part of the alleged conversations were had after the termination of the alleged conspiracy, and that said alleged conversations were admitted as against all the defendants, to the prejudice of all the defendants. Pages B. of E. 697 to 699, inclusive.

28.

The court erred in overruling the defendants' respective motions for a directed verdict of not guilty at the close of the Government's case.

29.

The court erred in overruling the defendants' motion to strike and exclude the testimony of the Government's witnesses Victor J. Dowd and Alexander Campbell. Page B. of E. 999.

282

30.

The court erred in permitting the prosecutor to cross-examine the defense witness, the defendant Louis Kaplan, far beyond the scope of the direct examination, to the prejudice of the defendants. Page B. of E. 1008.

31.

The court, by his interrogation of the defendant, Anthony Horton, indicated his disbelief in his testimony, to the prejudice of the defendants. Page B. of E. 1070.

32.

The court erred:

a) In cross-examining the defendant, Norton I. Kretske, beyond the scope of judicial authority.

b) By his interrogation indicated his disbelief in the testimony of the defendant, Norton I. Kretske, to the prejudice of the defendants. Page B. of E. 1123.

33.

The court, by intervening in the direct examination of the defendant, Alfred E. Roth, and by the manner, form and extent, of the Court's cross-examination of said defendant, indicated a disbelief of his testimony, to the prejudice of the defendants. Pages B. of E. 1163 and 1164.

34.

The court made unfair comment in defending the shouting of the prosecutor while cross-examining the defendant, Alfred E. Roth, to the prejudice of the defendants. Page B. of E. 1178.

35.

The court erred in cross-examining the defendant, Alfred E. Roth, beyond the scope of judicial authority, to the prejudice of the defendants. Pages B. of E. 1186 and 1187.

36.

The court erred in propounding an unfair question to the defendant, Alfred E. Roth, which created a prejudicial inference. Page B. of E. 1191.

283

37.

The court, by his remarks, created an inference that he was hostile to the defendant, Alfred E. Roth, thereby denying the defendants a fair and impartial trial. Pages B. of E. 1195, 1196 and 1197.

38.

The court erred:

- a) in permitting changing of cross-examiners.
- b) in permitting the prosecutor to ask improper questions of the defendant, Alfred E. Roth, on recross examination to the prejudice of the defendants. Page B. of E. 1202.

39.

The court erred in permitting the prosecutor to testify in the form of questions propounded to the defendant, Alfred E. Roth, to prejudicial inferences not based on facts in the case. Page B. of E. 1204.

40.

The court erred in refusing to permit Dr. Ettleson, the defense witness, to testify as to his opinion concerning the mental capacity of government's witness, Joseph Cole, to the prejudice of the defendants. Page B. of E. 1210.

41.

The court erred in not permitting the defendants to show that the citation proceedings against E. C. Yellowley for a rule on him to show cause why he should not be held in contempt of court for having carried on private conversations with the foreman of the Grand Jury during the

time said Grand Jury was investigating the activities of the Alcohol Tax Unit, to the prejudice of the defendants. Pages B. of E. 1223 and 1224, 1378 to 1383, inclusive.

42.

The court, by his remarks, while the defense witness Judge Igoo, was on the witness stand:

- a) invaded the province of the jury.
- b) attempted to destroy one of the theories on which the defense was predicated, to the prejudice of the defendants. Page B. of E. 1224.

284

43.

The court erred in interrogating Government's witness, Agent Bailey, while defense witness, Judge Igoo, was on the stand, to the prejudice of the defendant. Page B. of E. 1227.

44.

The prosecutor was unfair in stating as a fact matters which were in issue and questions for the jury while the defense witness, Judge Igoo, was on the witness stand, to the prejudice of the defendants. Pages B. of E. 1233 and 1235.

45.

The court erred:

- a) in denying defendants' motion to strike the statement of the prosecutor.
- b) by the manner and form of his remarks in answering the motion to strike created a prejudicial inference. Page B. of E. 1234.

46.

The court erred in striking parts of the testimony of the defendant, Daniel D. Glasser, to the prejudice of the defendants. Pages B. of E. 1248, 1249, 1256 and 1368.

47.

The court, by his remarks, during the direct examination of Daniel D. Glasser, created a prejudicial inference. Page B. of E. 1249.

48.

The court erred in cross-examining the defendant, Daniel D. Glasser, concerning an indictment of one Abesketos,

which in fact did not exist, and which created a prejudicial inference. Page B. of E. 1271.

49.

The court, by repeatedly referring to the Abeskotos matter, unduly emphasized the same, to the prejudice of the defendants. Pages B. of E. 1271, 1273, 1364, 1365, 1366 and 1377.

50.

The prosecutor prejudiced the rights of the defendants to a fair trial by not complying with the order of 285 court to permit the defendant, Daniel D. Glasser, to examine the file and reports in possession of the prosecution for the purpose of refreshing the defendant's, Daniel D. Glasser's, recollection for cross examination. Pages B. of E. 1320 and 1321.

51.

The court erred in refusing to admit in evidence:

- a) testimony of the defense witness, Eckstone, concerning the report of the April, 1937, Grand Jury.
- b) the report of the April, 1937, Grand Jury, to the prejudice of the defendants. Pages B. of E. 1094, 1095 A, B, C, D, E, F, G, H and I, inclusive.

52.

The court erred in permitting the prosecution to introduce improper rebuttal evidence by the Government's witness, Agent Bailey. Pages B. of E. 1384 to 1387, inclusive.

53.

The court erred in permitting the prosecution to introduce testimony on rebuttal concerning:

- a) the character of Government's witness, Agent Bailey.
- b) his marks of honor because of injuries received in the discharge of his duties, to the prejudice of the defendants. Page B. of E. 1385.

54.

The court erred in permitting the government on rebuttal to improperly attempt to impeach the testimony of the defendants, Daniel D. Glasser and Alfred E. Roth, by

questions propounded to the Government's witnesses, Bailey and Gentry, to the prejudice of the defendants. Pages B. of E. 1386 to 1388, inclusive.

55.

The court erred in permitting the Government to recall the Government's witness, Bailey, a second time, on rebuttal, to the prejudice of the defendants. Page B. of E. 1389.

286

56.

The court erred in admitting in evidence:

a) The testimony of Government's witness, Bailey, concerning the reports made by him and others, outside the presence of any defendants.

b) The daily reports of Agents Bailey and Smallwood, to the prejudice of the defendants. Pages B. of E. 1389 to 1392, inclusive.

57.

The court erred in restricting and limiting the cross-examination of the Government's rebuttal witness, William J. Campbell. Page B. of E. 1392.

58.

The court went beyond the scope of judicial authority in committing acts of advocacy on the examination of the following witnesses, to the prejudice of the defendants:

a) The Government's witness, Del Rocco. Page B. of E. 168.

b) The Government's witness, Frank Hodorowicz. Pages B. of E. 237 and 242.

c) The Government's witness, Anthony Hodorowicz. Pages B. of E. 301 to 303, inclusive.

d) The Government's witness, Sylvan White. Page B. of E. 533.

e) The Government's witness, Joseph Cole. Pages B. of E. 570 to 584, inclusive.

59.

The court erred in permitting the prosecutor to ask leading and suggestive questions of the following Government witnesses, thereby prejudicing the defendants' rights to a fair trial:

a) The witness, Swanson. Pages B. of E. 146, 147, 150, 151 and 153, inclusive.

b) The witness, Del Rocco. Page B. of E. 169.

- c) The witness, Joseph Cole. Page B. of E. 574.
- d) The witness, Ellis. Page B. of E. 593.
- e) The witness, William Wroblewski. Page B. of E. 648.
- f) The witness, William Brantman. Pages B. of E. 675 to 677, inclusive.
- g) The witness, Harry Dukatt. Page B. of E. 726.

60.

The court created prejudicial inferences against the defendants:

- a) By the manner and form of his examination of 287 the Government's witness, Swanson. Pages B. of E. 147 and 154.
- b) By his question of Government's witness, Commissioner Walker. Page B. of E. 233.
- c) By his questions of Government's witness, Anthony Hodorowicz. Pages B. of E. 298, 300, 301 to 303, inclusive.
- d) By his manner and form of his questions of Government's witness, Ellis. Page B. of E. 609.
- e) By his questions of Government's witness, Mae Jurkas. Page B. of E. 625.
- f) By the manner and form of his questions of Government witness, Slesur. Pages B. of E. 639 and 640.
- g) By the manner and form of examining Government's witness, Edward Wroblewski. Pages B. of E. 657 to 659, inclusive.

61.

The prosecutor, by the unfair manner and form of his questions, of the following Government's witnesses, prejudiced the defendants' rights to a fair trial:

- a) The witness, Swanson. Pages B. of E. 147, 150, 151 and 152.
- b) The witness, Del Rocco. Page B. of E. 170.
- c) The witness, Commissioner Walker. Page B. of E. 227.
- d) The witness, Frank Hodorowicz. Pages B. of E. 236, 243, 246 and 247.
- e) The witness, Ralph Sharp. Page B. of E. 341.
- f) The witness, Mae Jurkas. Page B. of E. 622.
- g) The witness, Stanley Slesur. Pages B. of E. 645 and 646.
- h) The witness, Edward Wroblewski. Pages B. of E. 657, 692 to 694, inclusive.
- i) The witness, Nick Abesketos. Page B. of E. 691.

62.

The court erred in interrogating the following Government witnesses as to their mental interpretation of statements made by other persons:

- a) The witness, Swanson. Page B. of E. 152.
- b) The witness, Frank Hodorowicz. Page B. of E. 237.

288

63.

The court made remarks prejudicial to the rights of the defendants during the examination of the following Government witnesses:

- a) The witness, Clem Dowiat. Pages B. of E. 206 to 209, inclusive.
- b) The witness, Sylvan White. Page B. of E. 533.
- c) The witness, Paul Sveck. Page B. of E. 562.
- d) The witness, Joseph Cole. Page B. of E. 579.
- e) The witness, Stanley Slesur. Page B. of E. 636.

64.

The court erred in making unfair prejudicial comment during the examination of the following witnesses:

- a) In repeating the testimony of the Government's witness, Morgan, in the form of a question. Page B. of E. 113.
- b) In repeating the testimony of the Government's witness, Frank Hodorowicz, in the form of a question. Page B. of E. 237.
- c) By ruling that government's witness, Brantman, was reluctant. Page B. of E. 675.
- d) By ruling that government's witness, Frank Hodorowicz, was a hostile witness. Page B. of E. 294.

65.

The court erred in unduly limiting and restricting the cross examination of the following Government witnesses, to the prejudice of the defendants:

- a) The witness, Workman. Pages B. of E. 118 and 119.
- b) The witness, Swanson. Page B. of E. 160.
- c) The witness, Sharp. Pages B. of E. 343.
- d) The witness, Raubunas. Page B. of E. 496.
- e) The witness, Dewes. Page B. of E. 554.
- f) The witness, Cole. Pages B. of E. 583 and 584.

66.

The court erred in permitting the prosecutor to interrogate Government's witness, Mae Jurkas, as to her state of mind, to the prejudice of the defendants. Page B. of E. 622.

The court erred in permitting the prosecutor to cross-examine the following Government witnesses on direct examination, to the prejudice of the defendants:

- a) The witness, Frank Hodorowicz. Page B. of E. 258.
- b) The witness, Gates. Page B. of E. 611.

The court erred in permitting the prosecutor to ask improper questions of the following Government witness on redirect examination, to the prejudice of the defendants:

- a) The witness, Workman. Pages B. of E. 124 and 128.
- b) The witness, Frank Hodorowicz. Page B. of E. 294.
- c) The witness, Sharp. Pages B. of E. 341, 342 and 343.
- d) The witness, Rossner. Pages B. of E. 363 to 371, inclusive.
- e) The witness, Raubunas. Pages B. of E. 514 to 517, inclusive.

The court erred in admitting in evidence testimony concerning the following cases, which were not included in the indictment or bill of particulars, to the surprise and prejudice of the defendants.

- a) U. S. *vs.* One Chrysler Sedan. Page B. of E. 138.
- b) The Swanson-Del Rocco-Joppek case. Page B. of E. 176.
- c) The Brantman and Abosketes matter. Page B. of E. 681.

The court erred in admitting in evidence the following exhibits, to the prejudice of the defendants:

- a) Exhibit 4, Being records which were not the best evidence of the facts. Page B. of E. 111.
- b) Exhibit 92, being the typewritten statement of Government's witness, Raubunas, dated October 20, 1939. Pages B. of E. 512 to 514, inclusive.
- c) Exhibit 81, being the Alcohol Tax Unit report of the Western Ave. still case. Page B. of E. 524.
- d) Exhibit 113, being the report of the Alcohol Tax Unit on the Spring Grove still case. Page B. of E. 527.
- 290 e) Exhibits 116 and 117, being pictures of the barber shop at 1062 Polk Street. Page B. of E. 562.
- f) Exhibit 96, being the testimony of Joseph Cole, before the May 1938 Grand Jury. Page B. of E. 576.

g) Exhibit 97 to 112, inclusive, being the pictures of the Spring Grove still. Page B. of E. 577.

h) Exhibits 120 and 121, being a letter from the Treasury Department and a Supplemental report on the Kwiatowski case. Page B. of E. 589.

i) Exhibit 134, being a receipt from Government witness, Brantman, to Government witness, Abosketes. Page B. of E. 665.

j) Exhibits 156 and 157, being records which were not the best evidence of the facts. Page B. of E. 719.

k) Exhibits 160 and 163, being the Alcohol Tax Unit report on the Hodorowicz case. Page B. of E. 735.

71.

The court erred in permitting the prosecution to read to the Jury the following exhibits, to the prejudice of the defendants:

a) Exhibit 113, being the report of the Alcohol Tax Unit on the Spring Grove still case. Pages B. of E. 536, 536A and 536B.

b) Exhibit 96, being the testimony of Joseph Cole before the May, 1938 Grand Jury. Page B. of E. 576.

c) Exhibits 120 and 121, being a letter from the Treasury Department and a supplemental report on the Kwiatowski case. Page B. of E. 58.

72.

The Court erred in unduly restricting the defense on direct examination from showing facts material to the issues in the case, to the prejudice of the defendants, by:

a) Sustaining an objection to the question propounded to the defense witness, Judge Woodward. Page B. of E. 1028.

b) Sustaining the objection to the question propounded to the defense witness, Sidney Baker. Page B. of E. 1044.

c) Sustaining the objection to the question propounded to the defense witness, Judge Igoo. Pages B. of E. 1218 and 1219.

73.

The court, by his questions, propounded to the defendant, Daniel D. Glasser, created unfair inferences, in the following manner, to the prejudice of the defendants:

291 a) That the defendant, Daniel D. Glasser, was evasive in his answers. Page B. of E. 1319.

b) By cross-examining the defendant, Daniel D. Glasser, on collateral, immaterial, incompetent and irrelevant, highly prejudicial matters. Pages B. of E. 1328 to 1330, inclusive.

c) By indicating his disbelief in the testimony of the defendant, Daniel D. Glasser. Pages B. of E. 1341 to 1344, inclusive.

74.

The court committed acts of advocacy and went far beyond the scope of judicial authority in his repeated cross-examination of the defendant, Daniel D. Glasser, while said defendant was on the witness stand, to the prejudice of the defendant. Pages B. of E. 1294, 1322, 1326, 1328, 1329, 1330, 1349, 1364, 1365 and 1366.

75.

The court erred in overruling the defendants' motion for a directed verdict of not guilty at the close of all the evidence.

76.

The court erred in overruling the defendants' motion to strike and exclude the testimony of Government's witness, Alexander Campbell, for the reasons assigned in said motion, which are herein incorporated as if fully set forth.

77.

The court erred in overruling the motions of the defendants for findings of not guilty, notwithstanding the verdict.

78.

The court erred in denying the motion of the defendants for a new trial.

79.

The court erred in denying the defendants' motion in arrest of judgment.

80.

The evidence failed to establish a conspiracy as alleged in the indictment and was insufficient to convict the defendants.

292 The defendants were denied a fair and impartial trial by reason of the cumulative errors assigned on their points one to eighty, inclusive.

Wherefore, Daniel D. Glasser, Norton I. Kretske, and Alfred E. Roth, the said defendants, by reason of the errors aforesaid, pray that the judgment of the District Court may be reversed.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Defendants.

293 Endorsed: In the District Court of the United States. * * (Caption—31825) * * The Joint and Several Assignment of Errors of the Defendants, Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth. Filed Jun 27, 1940 ato'clock..... Hoyt King, Clerk.

263 And afterwards, to wit, on the 17th day of May, A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

Entered
May 17
1940.

264 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—31825) * *

ORDER FIXING THE TIME FOR FILING BILL OF EXCEPTIONS AND ASSIGNMENT OF ERRORS.

Notice of appeal having heretofore been filed by Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth, and the Clerk of this Court having notified the Trial Judge of the filing of said notice of appeal, and the Trial Judge having directed the appellants and the United States Attorney to appear before him on Friday, May 17, 1940, at the hour of 10 A. M., in the United States Court House, Chicago, Illinois, and it having been represented to the Judge upon behalf of the appellants that the appeal is to be prosecuted not only upon the clerk's record of proceedings, but also upon a bill of exceptions.

It Is Hereby Ordered that the appellants not later than June 19, 1940, deliver to the United States Attorney at Chicago, Illinois, their bill of exceptions for examination, and that the United States Attorney approve and deliver same to the appellants not later than June 25, 1940; that in the event the United States Attorney does not approve said bill of exceptions, he shall nevertheless deliver the same together with his reasons therefor, to the appellants not later than June 25, 1940.

265 It is Hereby Further Ordered that the United States Attorney and the appellants be and appear before this Court in the United States Court House at Chicago, Illinois, on June 27, 1940, at 10 A. M., for the purpose of settling and filing with the Clerk of this Court, the bill of exceptions and that the appellants file their assignment of errors not later than June 27, 1940.

Enter:

Patrick T. Stone,
Judge.

Dated at Chicago, Illinois, May 17, 1940.

Approved:

William J. Campbell,
United States Attorney.

Approved:

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Appellants.

266 And afterwards, to wit, on the 17th day of May, A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

267 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

Entered
May 17,
1940.

ORDER CERTIFYING ORIGINAL EXHIBITS.

It is Hereby Ordered that all the original physical exhibits introduced on behalf of the United States and all the original physical exhibits introduced on behalf of all the defendants on the trial of the above cause, be certified and sent by the Clerk of this Court to the Circuit Court of Appeals for the Seventh Circuit.

It Is Hereby Further Ordered that the said exhibits be and the same are by reference incorporated in and made a part of the bill of exceptions in said cause.

Enter:

Patrick T. Stone,
Judge.

Dated at Chicago, Illinois, May 17, 1940.

Approved:

William J. Campbell,
United States Attorney.

Approved:

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Appellants.

268 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

Filed
May 17,
1940.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To: Hoyt King, Esq., Clerk of said District Court:

You will please prepare a true and complete transcript of the following parts of the record in the above entitled cause, to be filed with the Clerk of the United States Circuit Court of Appeals for the Seventh Judicial District, pursuant to the appeal taken by the defendants, Daniel D. Glasser, Norton I. Kretze and Alfred E. Roth, to-wit:

1. Placita.

2. Return of indictment and order to file same and indictment, entered September 29, 1939.

3. Order granting leave to defendants to file any and all motions in twenty days and continued for pleas to November 3, 1939, entered October 12, 1939.

4. Order granting leave to file motion to quash indictment and affidavit in support of same and rule on United States to plead, answer or demur to said motion within three days, entered October 31, 1939.

5. Motion of defendants to quash indictment and affidavit in support of same, entered October 31, 1939.

6. Motion of United States Attorney to strike both motion and affidavit in support of same, entered October 31, 1939.

269 7. Order cause transferred to executive committee, entered November 2, 1939.

8. Appearance of George Callaghan for defendant, Daniel D. Glasser, entered November 1, 1939.

9. Appearance of Harrington and McDonald, attorneys for Norton I. Kretze, entered November 2, 1939.

10. Order denying motion of defendants to quash indictment and exception thereto, entered November 7, 1939.

11. Demurrers as to defendants, Daniel D. Glasser, Norton I. Kretze and Alfred E. Roth, entered November 10, 1939.

12. Order overruling demurrers of all defendants and exception thereto and leave for all defendants to demand bill of particulars in ten days, entered November 16, 1939.

13. Order extending time for all defendants to file motion for bill of particulars to November 29, 1939, entered November 22, 1939.

14. Petitions for bill of particulars of defendants, Daniel D. Glasser, Norton I. Kretze and Alfred E. Roth, entered November 29, 1939.

15. Order directing United States Attorney to answer certain questions set forth in petitions of Daniel D. Glasser and Norton I. Kretze and ordered that government's proofs will not be limited to the answer made by it to said demands for particulars, entered December 20, 1939.

16. Bill of particulars, entered December 28, 1939.

17. Petition of Alfred E. Roth for reconsideration of his demurrer, entered January 9, 1940.

18. Order setting hearing of Alfred E. Roth for reconsideration of demurrer for January 29, 1940, entered January 23, 1940.

19. Petition of Daniel D. Glasser for severance, entered January 25, 1940.

270 20. Appearance of William Scott Steward as associate counsel for Daniel D. Glasser, entered January 26, 1940.

21. Petition of Norton I. Kretze for more specific bill of particulars, entered January 27, 1940.

22. Order denying motion of Norton I. Kretze for more specific bill of particulars and exceptions thereto, entered January 29, 1940.

23. Order denying petition of Alfred E. Roth for reconsideration of demurrer and exception thereto, entered January 29, 1940.

24. Petition of Alfred E. Roth for severance, entered January 29, 1940.

25. Order denying petition of Alfred E. Roth for severance and exception thereto, entered January 29, 1940.

26. Order denying motion to strike bill of particulars and exception thereto, and motion of Daniel D. Glasser for a severance denied and exception thereto, and order striking that part of petition for severance on Page 5, which refers to ill feeling between Joseph Harrington, the Judge and District Attorney, entered January 29, 1939.

27. Plea of not guilty entered by each defendant, entered January 29, 1940.

28. Order reassigning cause to calendar of Judge Stone nunc pro tunc as of November 2, 1939, entered on January 30, 1940.

29. Appearance of Cassius Poust as associate attorney for Alfred E. Roth, entered February 5, 1940.

30. Motion for continuance and affidavit in support of same by Joseph P. Harrington, attorney for Norton I. Kretze, entered February 5, 1940.

31. Order overruling motion of Norton I. Kretze for continuance and exception thereto, and order appointing Bernard J. McDonald as counsel for Norton I. Kretze, and continued to February 6, 1940, for trial, entered February 5, 1940.

271 32. Motion of Bernard J. McDonald, attorney

for Norton I. Kretze, for continuance and affidavit in support of same, entered February 5, 1940.

33. Order vacating appointment of Bernard J. McDonald as attorney for Norton I. Kretze and order appointing William Scott Steward, attorney for Norton I. Kretze, entered February 6, 1940.

34. Motion at close of opening statements for government for directed verdict of not guilty as to each defendant and order overruling same and exception thereto, entered February 7, 1940.

35. Motion of defendants to exclude proposed testimony of Alexander Campbell and order of court overruling same and exception thereto, entered February 23, 1940.

36. Motion of Alfred E. Roth to strike and exclude the testimony of Alexander Campbell and order overruling same and exception thereto, entered March 5, 1940.

37. Motion of each defendant at the close of the government's case for directed verdict of not guilty on both counts and order overruling same and exceptions thereto, entered February 26, 1940.

38. Motion of defendants, United States Attorney elects to stand on count 2 and dismissing Count 1 and order of court to that effect, entered February 27, 1940.

39. Motion of all the defendants for directed verdict at the close of all the evidence and order overruling same and exception thereto, entered March 5, 1940.

40. Verdict of jury finding the defendants guilty, entered March 8, 1940.

41. Motion of defendants for finding of not guilty notwithstanding the verdict and continued to April 8, 1940, entered March 8, 1940.

42. Motion of defendants for finding of not guilty notwithstanding the verdict and motion for new trial continued to April 22, entered April 8, 1940.

43. Motions of defendants for finding of not guilty notwithstanding the verdict and motions for new trial heard on argument and continued to April 23, 1940, entered April 22, 1940.

44. Order granting leave to Daniel D. Glasser to file three affidavits, entered April 23, 1940.

45. Three affidavits filed by Daniel D. Glasser, entered April 23, 1940.

46. Order granting leave to Alfred E. Roth to file two

affidavits in support of motion for new trial, entered April 23, 1940.

47. Two affidavits in support of motion for a new trial filed by Alfred E. Roth, entered April 23, 1940.

48. Order granting leave to Alfred E. Roth to file motion for directed verdict at the close of all the evidence, entered April 23, 1940.

49. Order denying motion of defendants' for finding of not guilty notwithstanding the verdict and exceptions thereto, and motion of all defendants for new trial overruled and exception thereto, entered April 23, 1940.

50. Leave to file motion of all defendants in arrest of judgment and order overruling same and exception thereto, entered April 23, 1940.

51. Judgment and sentence as to each defendant, entered April 23, 1940.

52. Order fixing appeal bond as to each defendant, entered April 23, 1940.

53. Notice of appeal as to defendants, Daniel D. Glasser and Norton I. Kretze, entered April 26, 1940.

54. Notice of appeal as to defendant, Alfred E. Roth, entered April 27, 1940.

273 55. Order granting defendants time in which to prepare and file bill of exceptions and assignment of errors.

56. Order incorporating defendant's exhibit into record and made a part of the bill of exceptions.

57. Assignment of errors.

58. Bill of exceptions.

59. Order approving bill of exceptions.

60. Certificate of clerk authenticating transcript of record.

Daniel D. Glasser,
Norton I. Kretzke,
Alfred E. Roth.

Received a Copy of the above and foregoing praecipie for transcript of record, this 4th day of May.

William J. Campbell,
U. S. Attorney.

274 Endorsed: In the District Court of the United States * * (Caption—31825) * * Praeipie for Transcript of Record. Filed May 4, 1940 Hoyt King Clerk.

275 Northern District of Illinois } ss:
Eastern Division

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings with the exception of the Assignment of Errors and Bill of Exceptions had of record made in accordance with Praecipe filed in this Court in the cause entitled United States *vs.* Daniel D. Glasser, et al. D. C. 31825 as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 25th day of May, A. D. 1940.

Hoyt King,

(Seal)

Clerk.

1464 Northern District of Illinois } ss:
Eastern Division

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true transcript of the Assignment of Errors and Bill of Exceptions had of record made in accordance with Praecipe filed in this Court in the cause entitled United States *vs.* Daniel D. Glasser, et al. D. C. 31825 as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 27th day of June, A. D. 1940.

Hoyt King,

(Seal)

Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Filed
July 2,
1940.

United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Daniel D. Glasser, <i>Defendant-Appellant.</i>	}	No. 7315.
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MOTION TO ELIMINATE PORTIONS OF THE DISTRICT COURT CLERK'S RECORD, FORWARDED TO THIS COURT.

Now comes Daniel D. Glasser, the defendant, and moves the Court to eliminate from the record of the Clerk of District Court, forwarded to this court, the following parts of the record for the reason that said parts are incorporated in the Bill of Exceptions, filed in the cause, and will unnecessarily encumber the transcript of the record on appeal.

1. Motion to quash indictment and affidavit in support of same.
2. Motion of the U. S. Attorney to strike both motion to quash and affidavit in support of same.
3. Petition of Alfred E. Roth for reconsideration of demurrer.
4. Petition of Daniel D. Glasser for severance.
5. Petition of Alfred E. Roth for severance.
6. Motion for continuance and affidavit in support of same by Joseph T. Harrington.
7. Motion of Bernard J. McDonnell for continuance and Affidavit in support of same.
8. Motion of Alfred E. Roth for directed verdict of not guilty at the close of the Government's case.
9. Motion of Alfred E. Roth for directed verdict of not guilty at the close of all the evidence.
10. Motion of Alfred E. Roth to strike and exclude the testimony of Alexander Campbell.
11. Three affidavits filed by Daniel D. Glasser.

12. Two affidavits filed by Alfred L. Roth.

13. Motion of all defendants in arrest of judgment.

Dated at Chicago, July 2nd, 1940.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Defendants-Appellants.

Approved:

William J. Campbell,
United States Attorney.

Martin Ward,
Asst. U. S. Atty.

(Approved by Treanor, C. J.) July 10, 1940.

Endorsed: In the United States Circuit Court of Appeals * * (Caption—7315) * * Motion to Eliminate Portions of the District Court Clerk's Record, Forwarded to This Court. Filed Jul 2 1940 Kenneth J. Carriek Clerk.

Entered
July 10,
1940.

And, to-wit: On the tenth day of July, 1940, the following proceedings were had and entered of Record:

Wednesday, July 10, 1940.

Court met pursuant to adjournment.

Before:

Hon. Walter E. Treanor, C. J.

(Caption)

On motion of Defendants-Appellants, it is ordered that these appeals be consolidated for the purpose of having one transcript of record for all appeals.

Upon Petition of Defendants-Appellants, it is further ordered that this cause be heard upon the printed record of papers filed and proceedings entered in the District Court and the typewritten transcript of evidence.

It is further ordered that the motion to eliminate portions of the District Court Clerk's record be, and the same is hereby granted.

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record (without bill of exceptions) printed under my supervision and filed on the fifth day of Aug., 1940, in the following entitled causes:

The United States of America,
Plaintiff-Appellee.

7315 *vs.*

Daniel D. Glasser,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee,

7316 *vs.*

Norton I. Kretske,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee.

7317 v.s.

Alfred E. Roth,
Defendant-Appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 7th day of February, A. D. 1941.

(Seal) Kenneth J. Carrick,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 30

DANIEL D. GLASSER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 31

NORTON I. KRETSKE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 32

ALFRED E. ROTH, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 28, 1941.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.

DANIEL D. GLASSER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No.

NORTON I. KRETSKE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No.

ALFRED E. ROTH,

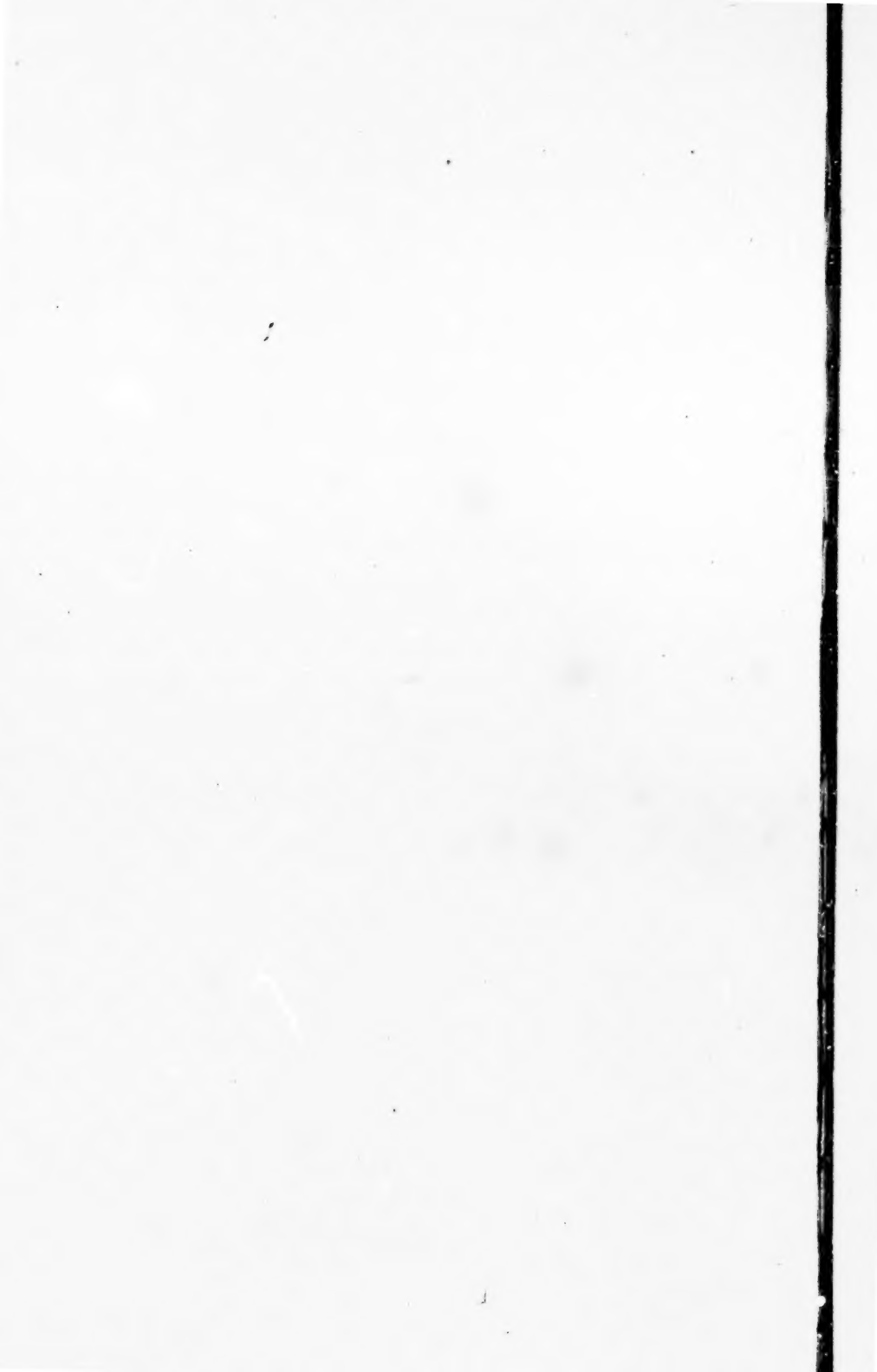
Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.



INDEX.

Index to printed record of proceedings in U. S. District Court	i
Clerk's certificate to printed record (without bill of exceptions)	138a
Clerk's certificate to volume I of bill of exceptions....	622a
Clerk's certificate to volume II of bill of exceptions...	1071
Index to proceedings in U. S. Circuit Court of Appeals:	
Placita	1073
Order of July 10, 1940, consolidating causes, etc...	1074
Certificate of Hoyt King, Clerk, U. S. District Court, to exhibits.....	1075
Supplemental certificate of Hoyt King, Clerk, U. S. District Court to exhibits.....	1093
Petition for order on U. S. Attorney to produce missing exhibits	1094
Answer to petition for order on U. S. Attorney to produce missing exhibits.....	1096
Reply to answer of U. S. Attorney for order to produce missing exhibits.....	1097
Additional answer of U. S. Attorney.....	1100
Order of Aug. 14, 1940, directing U. S. Attorney to transmit exhibits to U. S. Circuit Court of Appeals	1102
Additional assignment of error, filed in cause No. 7315	1103
Additional assignment of error, filed in cause No. 7316	1104
Additional assignment of error, filed in cause No. 7317	1105
Motion by U. S. Attorney to suppress brief of appellant Glasser	1105
Points and authorities in support of motion.....	1106

Affidavit of Francis J. McGreal.....	1108
Memorandum in support of answer to motion to suppress brief of appellant Glasser.....	1112
Order of Sept. 13, 1940, denying motion to sup- press brief of appellant Glasser.....	1116
Opinion by Kerner, J., filed Dec. 13, 1940.....	1117
Judgment as to appellant Glasser, affirming, en- tered Dec. 13, 1940.....	1139
Judgment as to appellant Kretske, affirming, en- tered Dec. 13, 1940.....	1140
Judgment as to appellant Roth, affirming, entered Dec. 13, 1940.....	1140
Petition for rehearing in cause No. 7315, filed Dec. 24, 1940	1141
Petition for rehearing in cause No. 7316, filed Dec. 24, 1940	1181
Petition for rehearing in cause No. 7317, filed Dec. 24, 1940	1189
Answer to appellants' petitions for a rehearing, filed Dec. 31, 1940.....	1211
Brief of Amicus Curiae, filed Jan. 4, 1941.....	1219
Memorandum in support of petition for rehearing of appellant Glasser, filed Jan. 7, 1941.....	1231
Orders denying petitions for rehearing, entered Jan. 23, 1941.....	1239
Praecipe for record on certiorari.....	1240
Clerk's certificate	1243
Verdict of jury filed March 8, 1940.....	1244
Orders allowing certiorari.....	1245



VOL. I. pp. 139 to 622.

BILL OF EXCEPTIONS

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

7315

vs.

DANIEL D. GLASSER,

Defendant-Appellant.

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

7316

vs.

NORTON I. KRETSKE,

Defendant-Appellant.

THE UNITED STATES OF AMERICA,

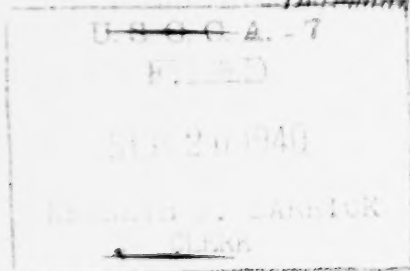
Plaintiff-Appellee,

7317

vs.

ALFRED E. ROTH,

Defendant-Appellant.



Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division.

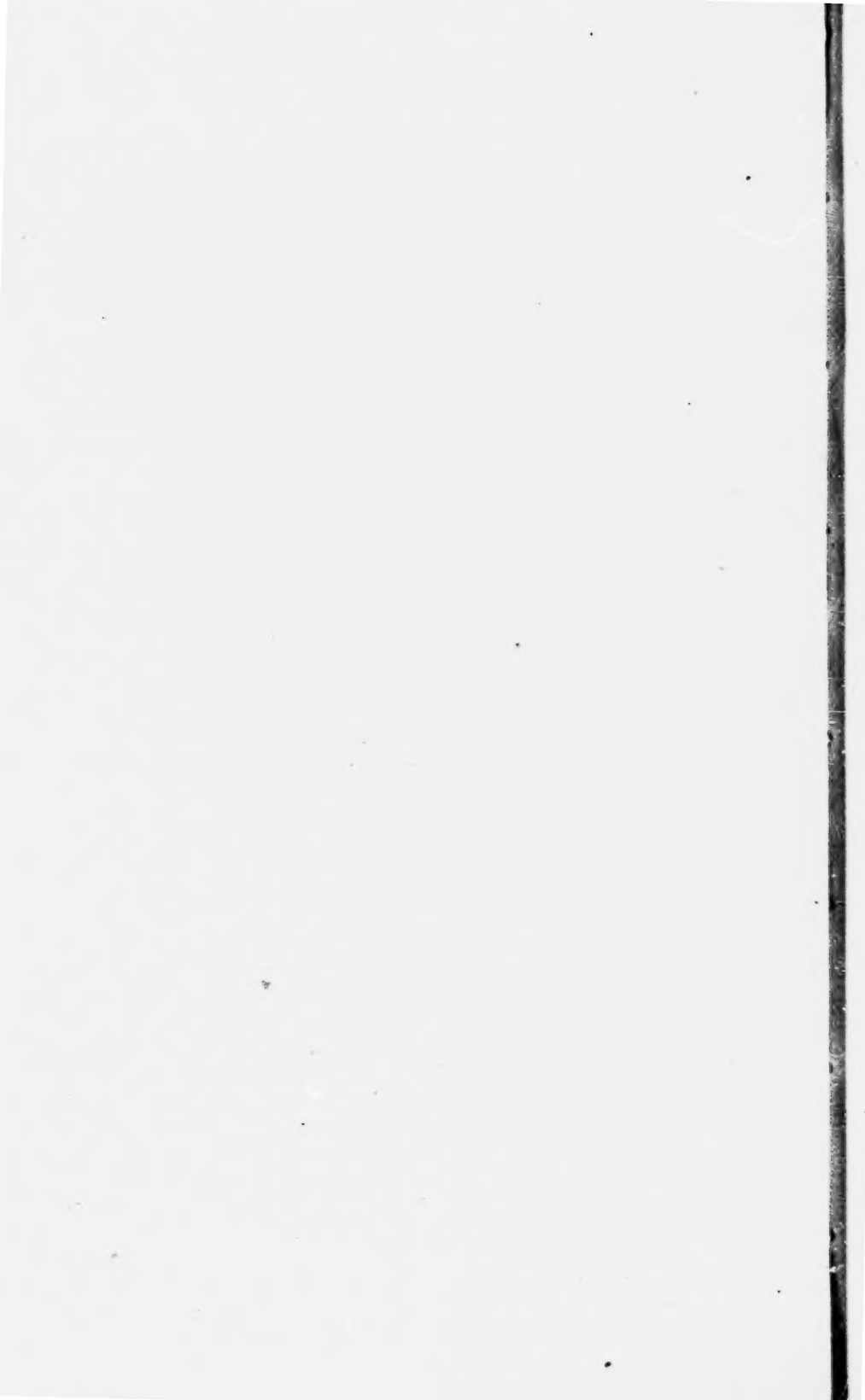
IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

7315 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
DANIEL D. GLASSER,
Defendant-Appellant.

7316 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
NORTON I. KRETSKE,
Defendant-Appellant.

7317 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
ALFRED E. ROTH,
Defendant-Appellant.

Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division.



INDEX.

BILL OF EXCEPTIONS.

(Filed June 27, 1940)

Motion of Defendants to Quash Indictment.....	141
Affidavit of Defendants in Support of Motion to Quash Indictment	143
Motion to Strike Motion to Quash Indictment and Affidavit	150
Reference to Order denying Motion to Quash.....	151
Argument by Mr. Ward on Demurrers filed by De- fendants	151
Petition of Roth for Reconsideration of Demurrer....	162
Petition of Roth for Severance	164
Petition of Glasser to Strike limitation of Bill of Par- ticulars, etc.	167
Reference to Defendants' Plea of Not Guilty.....	173
Notice and Motion of Kretske for continuance.....	173
Affidavit of Harrington	174
Motion of McDonnell, counsel for Kretske, for con- tinuance	183
Affidavit of McConnell	184
Petition of Frank Hodorowicz, Peter Hodorowicz and Clem Dowiat, for Probation in cause, U. S. A. v. Hodorowicz, et al., D. C. #31014.....	322
Exhibit No. 74—Report of Robert B. Ritter, Investiga- tor in Charge ..	406
Statement by Walter Kwiatkowski	412
Motion of Defendant Roth for directed verdict at close of Government's case	715
Report of April 1937 Grand Jury.....	789

Rule on E. C. Yellowley and Levi Z. Baker, etc. and	
Answer	1031
Motion of Defendant Roth for directed verdict at close	
of all evidence	1043
Motion of Defendant Roth to Strike Testimony of	
Alexander Campbell	1044
Reference to Verdict of Jury	1045
Affidavits of Defendant Glasser	1046
Article of American Bar Journal	1052
Affidavit of Defendant Roth	1057
Affidavit of Defendant Roth in Support of Motion for	
New Trial	1058
Motion of Defendants to Arrest Judgment.....	1059
Stipulation as to Exhibits	1066
Stipulation as to references to pages of Bill of Ex-	
ceptions in Assignments of Error.....	1067
Order as to References in Assignments of Error.....	1067
Reference to Judgments	1068
Judge's Certificate to Bill of Exceptions.....	1069
Colloquy.....	160, 178, 373, 394, 445, 519, 539, 585, 678, 1060

PLAINTIFF'S WITNESSES.

Testimony of:

Abosketes, Nick	663
Annis, Clay B.	354
Bailey, Thomas	646, 706, 712, 1034, 1039
Brantman, William M.	650, 711
Campbell, Alexander	680
Campbell, Francis J.	444
Campbell, William J.	1041
Cloonan, Bernard B.	442
Cohen, Abraham H.	617
Cole, Joe	569

Connors, William I.	698
Del Rocco, Christ.	242
Devereux, Walter J.	365
Deweś, Edward.	537
Donahue, Patrick.	357
Dowd, Victor J.	218
Dowiat, Clem.	268
Dukatt, Harry.	700
Ellis, Charles G.	588
Farber, Edward.	689
Freedman, William.	217
Gates, E. L.	603
Gentry, Clarence E.	1037
Gilbert, Edward K.	393
Goddard, Homer A.	249, 585
Halevan, Walter.	265
Hodorowicz, Anthony.	342
Hodorowicz, Frank.	295
Hodorowicz, Peter.	254
Jeffrey, Bess.	704
Jurkas, Mrs. Mae.	611
Jurkas, Tony.	616
Kral, Charles O.	705
Kwiatkowski, Walter.	408
Lancaster, Raymond L.	387
Lane, Edward B.	282
Lavelly, James W.	281
Meyers, Charles.	441
Morgan, Gordon S.	186, 528, 705, 1038
McFarlin, H. Wilson.	583
Newell, Edward T.	384
Ostrowski, Steve.	248
Passman, H. L.	642
Passman, Peter P.	640

Pregtner, Louis	582
Rankin, Lincoln	619
Raubunas, Victor	452, 713
Rossner, Clarence P.	277, 395
Schumacher, William E.	440
Sharp, Ralph	366
Simanello, Michael James	250
Slesur, Stanley	623
Stephenson, E. H.	713
Svec, Paul	556
Swanson, Elmer	225
Walker, Edwin K.	282
Wasielewski, Stanley	631
White, Frank L.	210
White, Sylvan R.	529, 587
Workman, William	197
Wroblewski, Edward	642, 674
Wroblewski, William	633

DEFENDANT GLASSER'S WITNESSES.

Testimony of:

Anderson, Daniel	823
Balaban, Henry L.	724
Barnes, John P.	717
Birnbaum, Benjamin	910
Blankenberg, Elsie	885
Bolton, Joseph	744
Chinnerello, Allen Joseph	1028
Cook, Hugo P.	745
Denk, Robert G.	829
Dignan, John P.	796
Eckstone, Sidney S.	784
Ettelson, Dr. Abraham	886

Glasser, Daniel D.	911
Hess, Edward J.	743
Igoe, Michael L.	890
Kaplan, Louis	722
La Rue, Victor E.	831
Snyder, Ralph	828
Weisbrod, Harry I.	783
Woodward, Charles A.	737

DEFENDANT KRETSKE'S WITNESSES.

Testimony of:

Balaban, Henry L.	724
Bayless, Samuel R.	1028
Bolton, Joseph	744
Eberhardt, Alfar M.	884
Gerhardt, Harold	736
Golde, Meyer	1029
Graber, Joseph A.	763
Haas, John F.	748
Hamlin, Harry F.	782
Hess, Edward J.	743
Igoe, Michael L.	890
Kaplan, Louis	722
Kretske, Norton I.	798
La Rue, Victor E.	831
Malloy, Patrick J.	1030
Robin, Samuel Martin	1029
Weisbrod, Harry I.	783

DEFENDANT ROTH'S WITNESSES.

Testimony of:

Adams, Harvey M.	763
Baker, Sidney	749
Berchern, Donald N.	796
Bornhorst, Frances	830
Clorfene, Irwin	890
Gilmore, Thomas B.	782
Gutgsell, Ralph J.	746
Kennedy, Herbert H.	783
Robson, Charles M.	889
Roth, Alfred E.	833

Testimony of:

Horton, Anthony J.	750, 765
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294 And afterwards, to wit, on the 27th day of June, A. D. 1940, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

295 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,
Eastern Division.

Thursday, June 27, A. D. 1940.

Present: Honorable Patrick T. Stone, Judge.

United States of America

vs.

Daniel D. Glasser, Norton I. Kretske
Alfred E. Roth.

} No. 31825.

This day come the defendants Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth and present herein their Bill of Exceptions which Bill of Exceptions is approved and signed by the Court and Ordered by the Court to be filed by the Clerk of this Court.

296 And on, to wit, the 27th day of June, A. D. 1940, came the defendants and filed in the Clerk's office of said Court a certain Bill of Exceptions in words and figures following, to wit:

298 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division,

at Chicago.

The United States of America

vs.

Daniel D. Glasser, Norton I. Kretske,
Anthony Horton, otherwise known
as Tony Horton, Louis Kaplan,
and Alfred E. Roth.

} No. 31825.

BILL OF EXCEPTIONS.

Be it remembered that the above entitled cause came on for hearing before the Honorable Patrick T. Stone, one of the Judges of said Court, on the 7th day of November, A. D. 1939, on the motion of the defendants to quash the indictment herein and on the motion of the United States Attorney to strike both the motion to quash and the affidavit in support of same.


Present:

Mr. Martin Ward and Mr. Francis McGreal, Assistants United States Attorney.

Mr. George F. Callaghan, for the Defendant, Daniel D. Glasser.

Mr. Joseph T. Harrington, for the Defendant, Norton I. Kretske.

Mr. Henry Balaban, for the Defendant, Anthony Horton.

 Mr. Edward J. Hess, for the Defendant, Louis Kaplan.

Mr. Alfred E. Roth, Pro Se.

Said motion to quash, and the affidavit in support of same, and motion to strike being in words and figures as follows:

299 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

MOTION TO QUASH INDICTMENT.

1. Now come the defendants Daniel D. Glasser; Norton I. Kretske; Anthony Horton, alias Tony Horton; Louis Kaplan; and Alfred E. Roth, each in his own proper person, and by their respective counsel they also come and move the Court to set aside and quash the indictment herein heretofore found against them and each of them because the Honorable Hoyt King, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, and the Honorable Harry D. Crooks, a commissioner appointed in accordance with the provisions of Section 412, Title 28 of the United States Code Annotated for said District appointed to select the Grand Jury which found and presented this indictment selected no person or persons of the female sex, known as "women" to serve on said Grand Jury; but on the contrary did exclude from the box of persons to serve as such Grand Jurors all persons of the female sex, known as "women" because of their sex; and that said Grand Jury was composed exclusively of persons of the male sex, to wit, "men" while all persons of the female sex, to wit, "women" although women constituted a substantial portion of the population of the judicial district known as the Northern District of Illinois, Eastern Division, and the County of Cook and the State of Illinois, and likewise a substantial portion of the registered voters of said District, County, and State, and although 300 otherwise qualified to serve as such Grand Jurors, were excluded therefrom on the ground of their sex, contrary to and in violation of the law and statute of the United States of America and the State of Illinois. The exclusion of persons of the female sex, to wit, "women" from the Grand Jury aforesaid, is a discrimination against the said defendants, and each of them, and is a denial to them and each of them of their respective rights guaranteed to them by the constitution and laws of the United States of America and of the State of Illinois.

2. And the said defendants move, and each of them moves, to set aside and quash the said indictment because the United States of America District Court for the North-

ern District of Illinois, Eastern Division on, to wit, the 29th day of September, 1939, at the September term of said United States of America District Court for the Northern District of Illinois, Eastern Division, contrary to law accepted a panel or venire of prospective Grand Jurors and empanelled, swore, and instructed them, and caused them to be constituted as the September 1939 Grand Jury of the United States of America District Court for the Northern District of Illinois, Eastern Division, from which said panel or venire of prospective Grand Jurors there had been excluded all persons of the female sex, known as "women", on account of their sex; and the said panel or venire of prospective Grand Jurors included only persons of the male sex, or "men", illegally, improperly and in violation of the laws of the United States of America and the State of Illinois. And because the said Grand Jury, so illegally constituted as aforesaid, found, returned, and filed said indictment in the United States of America District Court for the Northern District of Illinois, Eastern Division, on, to wit, September 29, 1939, during the term as such September Grand Jury. The exclusion of persons of the female sex, to wit, "women", from the Grand Jury aforesaid, was and is a discrimination against the said defendants and each of them, and was and is a denial to them 301 and each of them of their rights as guaranteed to them by the constitution and laws of the United States of America and of the State of Illinois.

3. Also come the said defendants, and each of them and move the Court to set aside and quash the indictment herein against them and each of them on account of and because the said indictment was not properly returned in open court and because the said indictment was filed without the proper order of court directing the receiving and filing of said indictment.

4. In support of this motion the defendants show unto the court their affidavit which is attached hereto and made a part of this motion as though fully set forth.

5. All of which the defendants Daniel D. Glasser; Norton I. Kretske; Anthony Horton, alias Tony Horton; Louis Kaplan; and Alfred E. Roth are ready to verify.

Daniel D. Glasser,
George F. Callaghan.

302 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

**AFFIDAVIT OF ALL DEFENDANTS IN SUPPORT
OF MOTION TO QUASH INDICTMENT.**

1. Daniel D. Glasser; Norton I. Kretske; Anthony Horton, alias Tony Horton; Louis Kaplan; and Alfred E. Roth; being first duly severally sworn upon their respective oaths say unto the Court that they are defendants in an indictment found in the above-entitled which was returned by the purported September, 1939 Grand Jury of the United States District Court, for the Northern District of Illinois, Eastern Division and filed in said Court on the 29th day of September, 1939; that the said purported Grand Jury was illegally chosen, selected, impanelled, organized, sworn, and constituted, and was not a legal Grand Jury, and that its acts and doings were and are illegal, null, and void. That the said purported Grand Jury was impanelled by the Honorable William H. Holly, then and there presiding over said Court, on September 5, 1939. The order by virtue of which said purported Grand Jury was drawn, summoned, and selected, and impanelled, and the said purported Grand Jury as chosen, selected, impanelled, organized, and constituted by said Court on said September 5, 1939, is herewith fully set forth as follows:

UNITED STATES DISTRICT COURT,

Northern District of Illinois.

Cause No. _____

(Date) Aug. 25, 1939

Title of Cause Grand Jury for The September Term, 1939.

Brief Statement of Notion,

303 Order directing Clerk of the District Court for the Northern District of Illinois, Eastern Division, to publicly draw the names of 60 persons from the jury box, for the purpose of selecting a grand jury to be impanelled and to serve in the Eastern Division of the Northern District of Illinois, for the September Term, A. D. 1939, of this Court, and to issue venire facias returnable at 12

o'clock noon, Chicago Daylight Savings Time, Tuesday, September 5, 1939.

Name of moving Counsel, William J. Campbell, United States Attorney.

(In left-hand margin:) WHH Issued 8/25/39.

2. That in accordance with the order aforesaid, and in conformity with the provisions thereof, for the purpose of impanelling the purported Grand Jury of the United States of America District Court for the Northern District of Illinois, Eastern Division, for the September, A. D. 1939 Term in said United States District Court for the Northern District of Illinois, Eastern Division, the following persons, sixty in number, as will more fully appear by the writ issued on the 25th day of August, 1939, and the return thereof by William H. McDonnell, United States Marshal.

304 all of whom were persons of the male sex and none of whom were persons of the female sex, were drawn, summoned, and on, to wit, September 5, 1939, at the September Term of the United States District Court for the Northern District of Illinois, Eastern Division, appeared before the Honorable Charles E. Woodward, the then and there presiding judge of said Court for the purpose of constituting the September 1939 Grand Jury of the United States District Court for the Northern District of Illinois, Eastern Division.

3. That afterwards, on to wit, September 5, 1939, the following named persons, all of whom were persons of the male sex and none of whom were persons of the female sex, who resided at their respective addresses, appearing after their respective names, were duly impanelled and sworn from the aforesaid list to constitute the Grand Jury of the United States District Court for the Northern District of Illinois, Eastern Division, for the September, A. D. 1939 Term of said Court and thereupon entered upon their duties as said Grand Jury:

Ahrens, Albert, Alden, McHenry

Alcott, W. D., 322 Downer Pl., Aurora, Kane

Beaven, Leslie W., 3547 N. Crawford Ave., Chicago, Cook

Boegerhoff, William, R.F.D. #2 Canfield Rd., Hinsdale, DuPage

Cain, Raymond, 6540 Drexel Ave., Chicago, Cook

Dolan, Thomas, 210 S. Yale Ave., Villa Park, DuPage

Duggan, M. P., 1600 E. 68th St., Chicago, Cook

Ericksee, J. C., 2532 N. Richmond, Chicago, Cook
Erickson, L. H., 999 N. Lake Shore Dr., Chicago, Cook
Hancock, George, 374 Anthony St., Glen Ellyn, DuPage
Haukes, John, Chicago Ridge, Cook
Hoffman, Clarence W., 820 E. Main St., Morris, Grundy
Jones, Sylvester, 5527 Kimbark Ave., Chicago, Cook
Kennedy, Robert, 37th & Douglas Rd., Downers Grove,
DuPage
Kordecki, Edward, 2839 N. Newland Ave., Chicago, Cook
McKnight, Osborne, 218 N. Addison Ave., Villa Park,
DuPage
Patterson, Charles, 655 Third Ave., Joliet, Will
Popenhagen, B. C., Hebron, McHenry
Schiff, Max, 1642 E. 56th St., Chicago, Cook
Seeberg, Michael, 4834 N. St. Louis Ave., Chicago, Cook
Swanson, Wm., 1022 W. 79th St., Chicago, Cook
Swartz, Orion L., 194 Glenview Ave., Elmhurst, Du-
Page

305 4. That the purported Grand Jury for the Sep-
tember 1939 Term of said United States District Court
for the Northern District of Illinois, Eastern Division,
was picked and impanelled and constituted as aforesaid
under the jurisdiction, guidance, and direction of the Hon-
orable Charles E. Woodward, the then and there presiding
Judge of the said Court on the 5th day of September,
1939, from the aforesaid list of sixty persons who had
been regularly summoned to appear before the said Court
on said day by the United States Marshal for the North-
ern District of Illinois. The list aforesaid and the names
of the persons constituting said list had been regularly
drawn under the order and direction of the said United
States District Court for the Northern District of Illinois,
Eastern Division, pursuant to the direction of the afore-
said order of said Court by the Clerk and Commissioner
thereof. That the said purported Grand Jury drawn, im-
panelled, and constituted as aforesaid, was illegally drawn,
impanelled and constituted as aforesaid, on account of and
for the reason that:

a. That the said Clerk and Commissioner of said Court
under authority of the Statute in such case made and
provided, "Manner of drawing Grand and Petit Jurors"
from a box containing at the time of each drawing the
names of not less than 300 persons possessing the neces-
sary qualifications on August 25, 1939 and prior thereto

maintained in said box containing said names, electors to be drawn for Grand and Petit Jury service in the said Court, composed only of persons of the male sex and eliminated from said box all persons of the female sex, from which box the said Clerk and Commissioner were accustomed to and did pursuant to the order of said District Court select the Grand Jurors for service in the said United States District Court.

b. That prior to the entry of the order aforesaid entered by the Honorable William H. Holly, then and there the presiding Judge of the said United States District Court, on, to wit, the 25th day of August, 1939, directing the said Clerk of said Court to publicly draw the names of sixty persons from the jury box for the purpose of selecting a Grand Jury to be impanelled and serve in the said Court for the September A. D. 1939 Term and which said order as directed the Clerk to issue a venire facias, returnable on September 5, 1939 at the September Term of said Court for the purpose of impanelling the Grand Jury in and of said Court for said September Term, the Sixty-first General Assembly of the State of Illinois, commonly called the "Illinois State Legislature" at its regular biennial session of 1939, adopted an act amendatory to the jury commissioners' Act, which is in words and figures as follows, to wit:

306 "Be it enacted by the People of the State of Illinois, represented in the General Assembly:

"Section 1. Section 2 of "An Act in relation to jury commissioners and authorizing judges of courts of record to a point such jury commissioners and to make rules concerning their powers and duties," approved June 15, 1887, as amended, is amended to read as follows:

"Sec. 2. The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list. The list may be revised and amended annually in the discretion of the commissioners. The name of each person on said list shall be entered in a book or books to be kept for that purpose, and opposite said name shall be entered the age of said person, his occupation, if any, his place of residence, giving street and number, if any,

whether or not he is a householder, residing with his family, and whether or not he is a freeholder.

/a/ John Staile,

President of the Senate.

/a/ Hugh W. Cross,

Speaker of the House.

Approved May 12, 1939,

/a/ Henry Horner,

Governor."

(Ill. Rev. Stat., p. 1913.)

that the said act was duly approved by the Governor of the State of Illinois, on the 12th day of May, 1939, and became and was the law of said State on and after said date; that the purpose of said Act was to make persons of the female sex, to wit, "women" eligible for jury duty in the State of Illinois; that the aforesaid amendment to the statute was the law of the State at the time of the entry of the aforesaid order of the United States District Court for the Northern District of Illinois, Eastern Division, directing the Clerk of said Court to draw, the names of sixty persons from the jury box for the purpose of selecting and constituting from said number of persons, the September 1939 Grand Jury of the United States District Court for the Northern District of Illinois, Eastern Division.

307 c. That the aforesaid amendatory act was the law of the State of Illinois and was in full force and effect on the 5th day of September, 1939, at the time the persons whose names had been previously drawn pursuant to the order of said District Court, and at the time said persons, all of whom were of the male sex, appeared before the said District Court for the purpose of constituting the Grand Jury for the September 1939 Term for said Court.

d. That the said Clerk and Commissioner of said Court at the time of the entry of said order of the said District Court for the drawing of the aforesaid sixty persons for use by said Court in impanelling the Grand Jury in and for the September A. D. 1939 Term of said Court were ministerial officers appointed by and subject to the order of direction of said Court and were an arm of said Court for the purpose of producing legally qualified electors for service as jurors in said Court.

e. That it was at all times from and after the approval of said amendatory act of the General Assembly, the right

and duty of the United States District Court for the Northern District of Illinois, Eastern Division, to command and compel said Clerk and Commissioner as an arm of the said Court to see that the intent and purpose of the amendatory act of the General Assembly, "Making Women Eligible for Jury Duty" was carried out and complied with.

f. That after the said amendatory act became the law of this state, and on and before August 25, 1939, said Clerk and Commissioner of said District Court intentionally and willfully omitted from the box containing the names of not less than 300 persons possessing the necessary qualifications for Grand Jurors, qualified female electors in violation of said amendatory act of the General Assembly (legislature) of the State of Illinois, and refused to recognize the said Act or to follow the mandate thereof in the manner of preparing the names of persons to be used in said box as qualified electors who would be eligible as prospective jurors in the said District Court for the pretended reason that the said Clerk and Commissioner claimed and asserted that the said amendatory act of the General Assembly was not mandatory and for the further pretended reason that acting upon the advice of United States Attorney by his representative Martin Ward, the said Clerk and Commissioner were not required to include qualified female electors in said list of persons placed in the said box containing not less than 300 persons from which Grand Jurors are drawn.

g. That it was the duty of the United States District Court for the Northern District of Illinois, Eastern Division, the Clerk and Commissioner of said Court to protect and safeguard the rights of the several defendants in the above-entitled cause, to a fair and impartial trial

according to the laws of the United States of America and the State of Illinois and it was the duty of the

said United States District Court for the Northern District of Illinois, Eastern Division, to reject the aforesaid September, 1939, Grand Jury venire consisting of the names of sixty persons and the said Court should have rejected and discharged all of the persons available in Court for service upon the September 1939 Grand Jury of said Court and should have refused to impanel and swear from among said persons a Grand Jury for September A. D. 1939 Term of said Court. And it was the duty of the United States District Court for the Northern

District of Illinois, Eastern Division, to have ordered, directed, and compelled the Clerk and Commissioner of said Court to forthwith according to law, draw, summon, and compel the attendance before the Court a venire of prospective jurors, drawn according to law from a box containing not less than 300 qualified persons which should have included female electors.

h. That these affiants believe the said September A. D. 1939 Grand Jury of the said United States District Court for the Northern District of Illinois, Eastern Division, was an illegal body, illegally constituted, drawn, and impanelled and that the act of said purported Grand Jury in voting a true bill of indictment and allegedly returning unto said District Court was illegal and void and of no effect.

i. That the act of the Clerk in receiving and filing said indictment of record in said Court and requiring the United States Marshal to take into custody the several defendants named upon said indictment by order of said Court was and is illegal and void.

j. That an examination of the records in the office of the Clerk of the said United States District Court for the Northern District of Illinois, Eastern Division, does not anywhere affirmatively show that the said indictment was returned in open court. The indictment now on file with the Clerk of said Court is absolutely void.

k. That by reason of the selecting, choosing, and impanelling, constituting, and swearing of the said alleged Grand Jurors in violation of law, the defendants have suffered actual and substantial injustice.

Wherefore the several affiants herein state that had the evidence against them been considered by a Grand Jury chosen, selected, and impanelled according to law, said affiants might not have been indicted.

309

Daniel D. Glasser,
Norton I. Kretske,
Anthony Horton,
Louis Kaplan,
Alfred E. Roth.

Subscribed and Sworn to before me this 31st day of October, A. D. 1939.

(Seal)

Joseph Mendriski,
Notary Public.

310 MOTION TO STRIKE BOTH THE MOTION TO QUASH INDICTMENT AND AFFIDAVIT IN SUPPORT THEREOF.

Now comes William J. Campbell, United States Attorney for the Northern District of Illinois, Eastern Division, and moves the Court to strike and hold for naught the alleged pleading entitled "Motion to Quash Indictment" and the Affidavit in Support Thereof, filed in this Court October 31, 1939, for the following reasons:

1. The matters alleged in said Motion to Quash should properly be presented by a Plea in Abatement.

2. The Motion to Quash the Indictment and the Affidavit in Support Thereof is wholly insufficient in law and fact to require answer thereto.

3. That the Petition is wholly insufficient in law to establish that the Clerk of the District Court, together with the United States Jury Commissioner, failed to either literally or substantially comply with Sections 411 and 412 of Title 28 of the United States Code.

4. That admitting all the facts alleged in the Motion to Quash the Indictment and the Affidavit in Support Thereof to be true, they are insufficient to show that the indictment was either improperly voted or illegally returned.

5. The Petition is wholly insufficient in that it fails to contain any allegation of fact which, if taken as true, would establish that the Grand Jury which voted the indictment was selected contrary to the directions of the statute in that the substantial rights of the defendants were invaded.

6. That the Motion to Quash the Indictment and the Affidavit in Support Thereof fails to allege any or sufficient facts to charge that there was any irregularity in drawing the Grand Jurors or that the defendants were prejudiced because of the manner of selecting the Grand Jurors.

7. That the Motion to Quash the Indictment and the Affidavit in Support Thereof is wholly lacking in averment of specific facts showing how, in what manner, and to what extent the defendants' rights were invaded and ignored by the method used in the selection of the Grand Jurors.

8. No Plea to Abate, or Motion to Quash the Indictment upon the ground of irregularity in the drawing or

impanelling of the Grand Jury or upon the grounds of disqualification of a Grand Juror was filed before or within ten days after October 12, 1939, the date said defendants were presented for arraignment.

William J. Campbell,
United States Attorney.

Thereupon, the Court heard arguments on said Motion to Quash and Affidavit in Support Thereof, and the motion to strike said Motion to Quash and Affidavit in Support Thereof, and denied said Motion to Quash, to which denial of the Court, the defendants, by their counsel, duly excepted.

Thereafter, the defendants filed their respective demurrers, and the Court heard arguments on said demurrers on behalf of the defendants and on behalf of the United States of America, and the argument of Martin Ward, Assistant United States Attorney was as follows:

312 United States of America, }
Northern District of Illinois. } ss.

United States of America, }
vs. } Before Judge Stone.
Daniel D. Glasser, *et al.* } Argument on Demurrer.

The hearing reconvened in the above entitled cause at the hour of 9:00 o'clock A. M., on the 14th day of November, A. D. 1939.

Present: Same counsel as before, to wit:

Mr. Ward,
Mr. McGreal,
Mr. Harrington,
Mr. Callahan,
Mr. Roth,
Mr. Balaban,
Mr. Hess.

313 Argument of Mr. Ward.

May it please your Honor: I heard your Honor make a remark that you would be pleased if counsel assumed in their argument, in effect, you indicated you had in the past experienced the opportunity of passing on a few indictments.

The Court: You might recall the story of the young man arguing before the Supreme Court. In discussing the question of law the Court said: "You might assume that the Court knows something about elementary principles." And, he said: "That was the mistake I made in the lower Court." You better not assume too much.

Mr. Ward: Well, I think I can assume that your Honor knows very well what counsel for each of these defendants have said up to the present reading. Now, of course, it is a bad rule for a person to be their own lawyer, possibly that applies to me somewhat, because I drew this indictment, so I have to be rather modest in speaking about the indictment, and I am not going to talk about it. I am going to just merely say this, however, that when I drew this indictment I had before me on my desk the case of *Linsaukey v. U. S.*, 31 Fed. (2nd) 846. Not cited by any of the counsel today.

314 I had before me, *U. S. v. Sager*, (49 Fed. 2nd, 726) already cited by counsel for the defendants.

I had before me *Curtis v. U. S.*, 67 Fed. (2nd) 943, not cited by counsel for the defendants. The Gebardi case in the 287 U. S. at page 112, I had before me. I was well aware of its holding when I drew this indictment, and I think the very last paragraph in the Gebardi opinion does not up-hold the contention of counsel for the defendants. All I want to call your Honor's attention to, and, I suppose your Honor perhaps read that too, the Court talks about the consummated act. When it talks about crimes requiring a concerted act on the part of the wrong-doers, each one of those opinions are very careful to mention and point out the consummated act.

I noticed my dear friend sitting here to my left, Mr. Calahan, when he read that Dietrich case, there were two things he didn't tell your Honor—one was that it was a conspiracy to defraud the United States, and, the second one he very conveniently left out the part of the quotation in that case which does not hold—

Mr. Ward: If you get me the book I will read it.

• Mr. Calahan: Yes, if you say I left something out read the whole case to the Court.

315 Mr. Ward: He didn't read anything about the consummated act.

Mr. Callahan: You read it.

Mr. Ward: His Honor will read the case.

Mr. Callahan: You read it, you asked for it.

Mr. Ward: It is a conspiracy to defraud the United States, that is right.

Mr. Callahan: And a conspiracy to violate some particular section.

Mr. Ward: In the Sager case—

Mr. Callahan: You charged I deliberately left something out of the Dietrich case, I would like to have you point out what I left out.

Mr. Ward: Please let me have that case. This is a long opinion, I can get right to it. In this case, this is the Dietrich case, 126 Fed. 664, at the top of Page 728, Justice Vandeverter said: "In this respect, agreeing to receive a bribe from another (reading) * * *

The indictment in this case all the way through is based upon a solicitation of promises, and I could stand up here and cite 25 or 30 hypothetical cases where this crime is alleged in this indictment could be committed without a consummated act or kind of bribery being committed. For

instance, counsel says the cases hold you can't conspire to accept a bribe. That is not true, you can conspire to.

I can see where an assistant district attorney can be in his office agreeing to accept a certain sum of money, and I could visualize there are many many acts performed to effect an object. I can imagine that the man is coming to the district attorney's office with the money and the district attorney is waiting there to accept it. I can see where he could be apprehended in the office and placed under arrest and the money found in the possession of the man who is going to be the one to give to the acceptor, and I can say under those circumstances that the United States Attorney would be guilty of conspiracy to accepting a bribe.

Now, the reason that the Reviewing Courts draw that distinction between not permitting the government to indict for conspiracy where the actual crime has been consummated. For instance, if an assistant district attorney accepts \$100.00 for an outsider he is guilty under the Statute of accepting a bribe, and that is all there is to it. The man comes up and there accepts it the district attorney does not charge him with conspiracy under those circumstances and because the parties are so closely
317 connected we are to form one intricate transaction not to be separated, not be divided up. That is what they mean by concerted action.

I can see where you can have a conspiracy to commit a dual under certain circumstances, and I can see where you can have a conspiracy to commit bigamy. But when a crime of bigamy or bribery or dualing, or, any of those crimes which require a concerted action have an act committed and consummated then the district attorney indicts them from the objective offense, and regardless of the statute—to aid, assist and encourage—he indicts them all as principals, and, regardless of whether a man is an official—there are a number of cases which hold although we can't, substantive offense, he can be indicated as a head, an abetter—you will see that they draw the distinction. For instance, in the Sager case, you didn't read that indictment—

Mr. Callahan: Let me correct something—you are charging me with not having read all of that case.

Mr. Ward: The Court had it before him, that is the reason I didn't read all of it.

Mr. Callahan: All right. I will say you refrain from reading too, I want to call attention to that.

The Court: It is all set up here.

318 Mr. Ward: Now, the indictment in that case, Your

Honor will see charges the giver handed the money to the juror during the course of that trial. The indictment charged from the impaneling of the jury down to and including the time when the jury was discharged,—something to that effect,—the money was actually handed by those conspirators to the juror. John Cruz, if I remember right, was the juror, and was paid the bribe. Now, of course, under those circumstances, the District Attorney should indict him for bribery, because there is a concerted action there, and the crime has been consummated. The objective offense has been committed.

Now, what is all this talk in this case about bribery. There isn't anything in this indictment that says that anybody paid Glasser a bribe. This indictment follows very closely the language in Section 91, namely, that there was a conspiracy on foot to solicit certain persons to make promises,—For instance, supposing that I have a case before the United States Commissioner, and I am the Defendant. Isn't it within the realm of possibility I can be solicited along these lines? Ward, you have a case over there before Walker, if you will pay us three hun-

dred dollars I will see you are discharged. The party says "Well, I will take it under consideration. I will think it over. I will have to see another party. You come back tomorrow." He comes back the next day and says, "Well, I think I will possibly go for that proposition, but I won't pay you the money until the goods are delivered." And the party says, "Well, you don't have to pay the money until the goods are delivered."

Now, he solicited a promise to pay. He solicited a man to promise money. That money is going to be used for a corrupt purpose.

Now, we in this indictment—the theory of this indictment is, the means alleged in this indictment—if there is any conspiracy at all, and I am presuming Glasser and all of these fellows are innocent,—if there is any conspiracy in this case at all, it is a conspiracy whereby an Assistant United States Attorney—two Assistant United States Attorneys, by the way,—there was nothing said so much about this being a continuing conspiracy until Your Honor mentioned it starting at thirty-five and ending at the return of the indictment. Continuing conspiracy to do these particular things,—it is one crime to violate—to commit many offenses against the laws of the United States,—those mentioned in Section 91,—and getting back to what I said before,—if there is no conspiracy here, the theory of the Government is that there were salesmen out. Now, I am just speaking, of course, figuratively, that there were salesmen out soliciting orders. Those orders were placed. The salesmen promised to deliver in a certain manner, under certain circumstances, all of these circumstances are alleged in the means in this indictment. The place where the orders were to be filed was in this building, the definite product was to be manufactured in this building. There was only one party in this building that was able to deliver the things which the party on the outside was soliciting. The indictment says that Glasser was the Assistant United States Attorney, and was in this building handling certain cases, alcohol tax cases particularly, those are the only class of cases that it is complained about, and the theory is that whatever Glasser had in this building, or whatever the proof will show he did, is evidence to establish the fact that there was an unlawful agreement going on outside of this building to solicit promises to pay money. Soliciting

people to offer money. Now, of course common sense
 321 dictates that the salesman—I say common sense dictates, and this indictment follows along this line, you can't have the salesman on the outside soliciting orders for certain things unless he can deliver that particular thing.

The indictment charges that Kaplan was a salesman, Horton was a salesman, Kretske was a salesman. Roth, who performed his part in this conspiracy—

Mr. Harrington: May I ask Mr. Ward to point out in the indictment where he alleges that?

The Court: Go ahead.

Mr. Ward: And they would solicit certain people, and they promised that they would do certain things, and these people would promise in return to do certain things, and all of these persons had cases in this building that were pending, or that were about to be brought, charges, against them, arising out of cases in violation of the Alcohol Tax Law.

Now, it is the theory of the Government that these orders as they were solicited were filled. These promises that were made on the outside were kept. These offers at one time were offers, and afterwards graduated into actually paying the money to certain parties. But it is not
 322 the contention of the Government in this case—count one I am speaking of—it is not the contention of the

Government in this case that this indictment is a conspiracy to accept a bribe, it is a conspiracy to solicit promises, and every one of these paragraphs in the means alleged, commences with the word solicited.

Now, counsel says he does not know what the word soliciting means. Now, it is meant in its ordinary sense to solicit something is to ask them to do a particular thing.

Now, just a word, and Your Honor, as I said before, I know you have read the indictment—

The Court: I have read it. Let us assume on the demurrer all the facts in the indictment are true and correct—

Mr. Ward: Yes.

The Court: And also assume that the Court in passing upon the proof must reconcile all the facts consistent with the Defendant, as far as the facts are consistent with the innocence as well as the guilt, must concede the innocence,—take this man Roth—

Mr. Ward: I was just going to get to that. Overt acts need not be criminal acts.

A man can light a cigar on the corner of Jackson Boulevard, that is an innocent act, and if I had that pleaded in the indictment he would say, "Well, what of it, 323 what does lighting a cigar on the corner of Clark and Jackson mean? I will plead guilty to that," But, if the proof in this case shows that the lighting of the cigar was a signal to a certain person to proceed to a certain point, and there meet another party who would take up and do something to carry out the object of this conspiracy,—the lighting of the cigar would not be an innocent act.

The indictment says Mr. Roth met with Alexander Campbell in Fort Wayne, Indiana, and he said, what about that. There is nothing to meeting with Alexander Campbell in Fort Wayne, but the indictment says to effect the object of the unlawful agreement he met, and the proof when this case is tried will show whether or not the overt act was in furtherance of the object of the conspiracy. And so the law has hundreds of cases which Your Honor is well familiar with, that the overt act need not be a criminal act, and what appears as an innocent act may be an overt act in carrying out a conspiracy. So that you can't—when we say that he met with a person, and that was to carry out the object of the conspiracy, when we say that they appeared in a court room and had a conversation, that 324 that was to carry out the object of the conspiracy, we are saying then that it was a criminal act in a way it made him a party to this unlawful agreement. Although it appears from the pleading itself that it is an innocent act. For instance, there is nothing wrong with Roth meeting in the court room and having a conversation with Glasser. He said, "I plead guilty to that." But, if he let me supply some additional facts as a premise I will guarantee you that he won't plead guilty to that. In other words, if it appears in this case that his conversation with Glasser in Judge Woodward's court room, and his participation there as a lawyer was a part of a scheme, part of an unlawful agreement, part of the means to more easily carry out an unlawful agreement entered into by the conspirators. More easy for perhaps the District Attorney to have somebody there representing the Defendant and not be required to represent both sides of the people. If

he lets me put alongside of it other facts which I have in my possession, then the innocent act of meeting Glasser in the court room as alleged in the overt act becomes a very criminal act, and becomes something which Your Honor can see makes him responsible under this statute, so that is not the test. That is not the test in this indictment for conspiracy, because the conspiracy is the unlawful agreement separate and apart from the object of the conspiracy.

The crime in this case is a violation of Section 88 of Paragraph 18. Now, the object of the conspiracy is to commit offenses detailed in Section 91, an unlawful agreement. If we prove the unlawful agreement to do these particular things, and if any one of the conspirators perform one overt act to accomplish the object of the conspiracy, and all of them enter the conspiracy initially and with the intent to join in it, become part of it, and act under that agreement, and we prove that beyond a reasonable doubt, you would have to find the Defendants guilty if Your Honor was trying them.

Now, what about count 2, conspiracy to defraud the United States by depriving it of an honest representation in these courts. By doing the acts alleged in the overt acts,—by doing the things alleged in the charging part of the indictment, and under count 2. Will anybody say as a conclusion from that premise that the United States was not defrauded? To have somebody representing the Department of Justice—what is the Department of Justice? It is a department that deals in justice. Justice, what does justice mean? Well, justice means doing the right thing according to the law, as a simple convention. If you haven't got the goods on a man, say so. If an agent of the United States Government has made a seizure without a search warrant, and it is an unlawful seizure, and there isn't one scintilla of proof to support the seizure, if there isn't any decision of the Court's that can make the seizure lawful, and you, as an Assistant United States Attorney know that, it is your duty to say no prosecution, and not to permit a complaint to be filed before the United States Commissioner.

In the Courts before a grand jury, if you have a case against a defendant, and you can show that grand jury probable cause, you have that evidence in your file, you have agents of the United States Government beseech you

to present that evidence to the grand jury, and you don't do it, you are defrauding the United States and you are defeating the ends of justice. If you indict a man, or you return an indictment out of the grand jury which is based on hearsay, conjecture, surmise, and no evidence at all, you are defeating the ends of justice, and if you are 327 doing that for money consideration, then much more serious does the offense become. And so this indictment, the whole theory of this indictment is that people were on the outside and a well coordinated plan and system was being followed, and soliciting people to make certain promises under count 1, that by reason of that solicitation and those promises, and by reason of the action of the Assistant United States Attorney in this building, the United States was deprived in these courts of a proper representative, justice was defeated, and the United States was defrauded. Now, that was only made possible by this combination.

Now, about this other thing, about these conspirators, there is nothing to that. Mr. Callahan said there was some long line of decisions, all of the adjudicated cases hold a fatal variance, because the conspirators, possibly those mentioned in that particular paragraph, were known to the grand jury. Well, the indictment says there were five defendants conspired, and others unknown to the grand jury. It does not say that those twelve men or the eighteen men mentioned in that paragraph were conspirators, they could be conspirators, and the grand jury possibly not know it. But in any event let us assume they were, there 328 is no fatal variance, and my authority for that is

Judge Evans of our own Circuit Court of Appeals in the case, I think, the United States versus Mike Heitler; I think you will find that in the 289 Federal, maybe I am wrong about it—I think 274 is the District Court opinion, and I think 289 is the Circuit Court of Appeals, holding that where it does appear that the grand jury did know certain persons, and they used the allegations to the grand jury unknown, it does not constitute a fatal variance, but that is only a matter that would occur on the trial of the case, and would only concern us when we get to the proof.

I have talked too long, Your Honor, and I hope I have not gone beyond that presumption, but now there are any number, you can sit down and think of any number of combinations, and they are all mentioned in that indictment.

met,—Where these particular cases that I cite, Gebardi, Curtis and Sager, do not apply.

I say this indictment meets all the requirements of the law, it fully and completely informs the Defendants of the charge they are required to meet, and the Circuit Court of Appeal in our district says that is all the Defendant is entitled to under the law.

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329 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption)

Thursday, November 16, 1939,
10:00 o'clock a. m.

Court met pursuant to adjournment.

Counsel Present: As before.

330 The Court: In the matter of the United States of America *vs.* Daniel D. Glasser, *et al.*, the Court is of the opinion that while the indictment is somewhat vague and indefinite, nevertheless it does charge the defendants with conspiracy to defraud the United States.

However I am of the opinion now that the defendants are entitled to a bill of particulars setting forth exactly what is charged and the times, places and persons involved.

I would suggest that counsel for the defendants—that it is only right and proper, to lessen their burden of defense and so they may properly prepare, that they know definitely and in particular just exactly what they are charged with. This is not set out as definitely as it ought to be.

If you will prepare your bill of particulars and submit that to the District Attorney, say within ten days, and if you can't agree, if the District Attorney's office fails to give you the information desired, then I will set the matter down for hearing.

Mr. Callaghan: I understand that the order this morning will be that the demurrer to the indictment is overruled?

The Court: Overruled.

Mr. Callaghan: On each count?

The Court: Yes.

Mr. McGreal: Will there be an order entered with reference to the bill of particulars?

The Court: I would suggest that you serve upon the District Attorney your demand for a bill of particulars, serve a written demand upon him.

331 Mr. Callaghan: The order will be that the defendants have leave to make application for a bill of particulars within ten days?

The Court: That is right.

Mr. McGreal: All you are asking for is a bill of particulars?

The Court: They will have to be satisfied with that. What they want to know is what they are charged with, in detail, so they can narrow this down—bring it back on the reservation.

Mr. McGreal: I think that with the distinguished counsel there is in this case, the document can be prepared within three or four days; I don't think they need ten days.

The Court: I think they ought to have ten days. Serve upon the District Attorney's office, in writing, a demand for a bill of particulars.

Mr. Roth: May the record show that all of the defendants may have an exception to the ruling of the Court.

(Which was all the proceedings had on the hearing of this matter on this day.)

Thereafter on to-wit: January 11, 1940, the defendant Roth filed his petition for reconsideration of his demurrer which was set for hearing on to-wit January 29, 1940, and after hearing arguments of counsel the Court overruled said petition for reconsideration of his demurrer to which the defendant Roth duly excepted. The said petition for reconsideration of his demurrer being in words and figures as follows:

332 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

PETITION OF THE DEFENDANT, ALFRED E.
ROTH, FOR RECONSIDERATION OF HIS DEMUR-
RER FILED TO THE INDICTMENT HEREIN.

To the Honorable Patrick Stone, Judge of Said Court:

Now comes Alfred E. Roth, one of the defendants herein, is his own proper person, and respectfully represents unto your Honor as follows:

1. That on the 10th day of November, 1939 he filed his demurrer to the indictment herein and adopts, by reference thereto, the entire record in this cause as if fully set forth.

2. That the grounds for demurrer, among other things, alleged that the indictment was vague, indefinite and uncertain, and the defendant was not advised thereby with reasonable particularity of the nature of the charges against him which he has to meet; that the indictment is duplicitous; that the indictment is repugnant and inconsistent; that the substance of the acts charged is as consistent with the hypothesis of innocence as with that of guilt and the indictment therefore fails to allege an offense against this defendant.

3. That after argument upon the demurrer and consideration by the court, the court, in overruling the demurrer, stated:

“The Court is of the opinion that while the indictment is somewhat vague and indefinite, nevertheless it charges the defendants with conspiracy to defraud the United States. However, I am of the opinion now that the defendants are entitled to a bill of particulars setting forth
333 what is charged and the times, places and the persons involved.”

4. That subsequent thereto the Court ordered the filing of a bill of particulars by the United States of America, which was filed on December 28, 1939.

5. That giving full effect to the bill of particulars for the purpose of giving further consideration to the demurrer filed by this defendant it fails to aid the indictment so as to charge any offense against this defendant.

6. That upon the argument of the demurrer the Assistant United States Attorney stated as follows:

"The indictment in this case all the way through is based upon a solicitation of promises and I could stand up here and cite twenty-five or thirty hypothetical cases where this crime is alleged in this indictment without a consummated act or ground of bribery being committed.

"Now, what is all this talk in this case about bribery. There isn't anything in this indictment that says that anybody paid Glasser a bribe. This indictment follows very closely the language in Section 91, namely, that there was a conspiracy on foot to solicit certain persons to make promises."

7. That the bill of particulars nowhere mentions the solicitation by this defendant of any money for any unlawful purposes or any payment by any person of any money to this defendant for any unlawful purposes. This defendant is not in any way mentioned in the bill of particulars.

8. That giving full effect to the vague and indefinite allegations of the indictment the gist of the allegations against this defendant is that he was a defense lawyer and engaged to defend certain persons charged with crime.

9. That the overt acts alleged as to this defendant are susceptible of innocent inferences and even then the overt acts have been nullified by the particulars which give no effect whatever to them.

Wherefore, your petitioner prays that this Court reconsider the demurrer filed by him in this cause and that, upon reconsideration, the same be sustained and the indictment quashed against this defendant and thereby prevent him from being subjected to expense, vexation and contumely of a trial upon an indictment which is wholly insufficient in law, since it is of the highest importance that no citizen be tried until he has been regularly and properly accused by the proper tribunal.

Alfred E. Roth,
Petitioner.

State of Illinois, }
County of Cook. } ss.

Alfred E. Roth being first duly sworn upon his oath deposes and says that he has read the above and foregoing petition by him subscribed and that the same is true in substance and in fact.

Alfred E. Roth.

Subscribed and sworn to before me this 9 day of January, 1940.

Betty Ford,
Notary Public.

335 Thereafter, the defendant Roth on to-wit January 29, 1940, filed his petition for a severance which was denied by the Court and to which denial he duly excepted, which petition is in words and figures as follows:

336 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—31825) • •

PETITION OF ALFRED E. ROTH, ONE OF THE DEFENDANTS HEREIN, FOR A SEVERANCE.

To the Honorable Patrick Stone, Judge of Said Court:

Now comes Alfred E. Roth, one of the defendants in the above entitled cause and respectfully represents unto your Honor as follows:

1. That your petitioner is a practicing lawyer who was opposed by Daniel D. Glasser, one of the defendants herein many times in the trial of cases during the time the said Daniel D. Glasser was representing the United States as assistant United States Attorney, and your petitioner is informed and believes that the said Daniel D. Glasser will testify in his own behalf on the trial of the above cause and that it will be necessary for your petitioner to cross-examine him concerning cases in which the said Daniel D. Glasser appeared as assistant United States Attorney and your petitioner as defense attorney.

2. That the defenses and questions on the trial of the defendant, Daniel D. Glasser, will be materially different

from those involved in the trial of your petitioner with whom your petitioner and the said Daniel D. Glasser is jointly charged, and serious antagonism calculated to prejudice your petitioner will occur between the defenses to be taken by your petitioner and the said Daniel D. Glasser, jointly charged, for the reason that an attack will be made upon him in connection with the prosecution of certain cases set forth in the Bill of Particulars in which the said Daniel D. Glasser appeared as an assistant United States Attorney and your petitioner as defense attorney and that the said Daniel D. Glasser will be compelled to defend his conduct.

3. That one of the co-defendants Louis Kaplan is a convicted violator of the internal revenue laws of the United States having to do with alcohol violations and serious prejudice will result in being tried with a co-defendant whose former conviction will be brought out on the trial of his cause, and your petitioner is informed and believes that the said Louis Kaplan will testify in his own behalf and deny the charges brought against him.

4. That evidence will necessarily be admitted as your petitioner is informed and believes in the prosecution and defense of all the defendants other than your petitioner in connection with solicitations and promises as alleged in the Bill of Particulars filed in this cause and incorporated by reference being had thereto as if fully set forth herein which would constitute hearsay and not be admissible as to your petitioner, no mention being made in the Bill of Particulars that your petitioner made any of the solicitations or promises and if a joint trial is had many hearsay statements not admissible as to your petitioner will reach the ears of the Jury, thirty (30) overt acts being alleged in the indictment herein which is incorporated herein by reference being had thereto as if fully set forth herein, namely overt acts 2, 4, 6, 7, 9, 11, 13, 14, 19, 21, 22, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, and 49 which allege conversations between the other defendants herein with various other persons, and your petitioner fears that the United States Attorney will offer said conversations as against your petitioner and your petitioner fears that if he is jointly tried with the other defendants the issue will become so involved and complex before the Jury that the Jury might lose sight of the fact that your petitioner cannot under the law be charged with the conspiracy by reason of the conduct and conversations

of other persons of which your petitioner was not a party and to which conversations and acts your petitioner did not acquiesce; all to the fatal prejudice of your petitioner whereby his constitutional right to a fair and impartial trial by the Jury will be violated.

Wherefore, your petitioner prays for a separate trial of himself apart from the other defendants in this cause.

Alfred E. Roth,
Petitioner.

State of Illinois, }
County of Cook. } ss.

Alfred E. Roth, being first duly sworn upon oath deposes and says that he has read the above and foregoing petition by him subscribed and that the same is true in substance and in fact except as to matters alleged to be stated upon information and belief and as to such matters he believes them to be true.

Alfred E. Roth.

Subscribed and sworn to before me this 29th day of January, 1940 A. D. 1940.

John A. Sullivan,
Notary Public.

339 Thereafter, on to-wit January 29, 1940, the defendant Daniel D. Glasser filed his petition to strike the limitation on the Bill of Particulars theretofor ordered by the Court, and to strike the Bill of Particulars and for a severance, and that the United States Attorney be required to elect on which count of the indictment he would proceed, and that the Court order the United States Attorney to have in Court subject to inspection to all parties in interest, the dockets, the reports, the files and file covers, and any and all papers which may be in the possession of the U. S. Attorney concerning matters which will be touched upon in said trial. All of which motions after arguments of counsel having been heard were by the Court overruled and denied, to which ruling of the Court the defendant Glasser there and then excepted. Said motion and petition is in words and figures as follows:

340 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

PETITION OF DANIEL D. GLASSER.

Your petitioner, Daniel D. Glasser, respectfully represents that he is one of the defendants in the above entitled cause and, as has been alleged in said indictment, your petitioner is a member of the bar and formerly held the office of assistant United States attorney.

Your petitioner has examined the indictment and, as was represented on the hearing on demurrer, your petitioner finds that the charging part of the indictment is contained in paragraph 14. Stripped of its legal verbage, your petitioner respectfully represents that paragraph 14 of the first count may be summed up as follows:

Your petitioner, together with four others named, and with other persons unknown, were in a continuous conspiracy in violance of Sec. 28, Title 18 of the U. S. Code of Laws, which is as follows:

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R. S. 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909. c. 321, 37, 35 Stat. 1096.)”

341 The law of the United States alleged to have been violated as the object of said conspiracy so alleged in the first count is Sec. 91, Title 18, of the Code of the Laws of the United States, which is as follows:

“Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House of Con-

gress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause or proceeding which may at any time be pending, or which may be law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years (R. S. 5451; Mar. 4, 1909, c. 321, 39, 35 Stat. 1096.):

Your petitioner respectfully represents that, as is shown by the record herein, the court ordered a bill of particulars, and your petitioner filed a number of interrogatories, all of which was made necessary by the vague and uncertain terms to be found in said paragraph 14.

Your petitioner having received a copy of the bill of particulars respectfully submits that same does not comply with the law and does not fully protect the rights of your petitioner. The order for said bill of particulars contains the following provision:

"It is further ordered that the Government's proof will not be limited to the answers made by it to the said demands for particulars if, during the trial of this cause, it appears to the satisfaction of the Court that in the interest of justice the said proof should not be so limited."

Therefore, your petitioner respectfully represents that after a careful study of said indictment, together with said bill of particulars, your petitioner can not safely go to trial because of said provision, for the reason that your petitioner in his official capacity handled ten or twelve 342 thousand cases as a representative of the Government.

It would be impossible for your petitioner to prepare for trial as against any cases with which your petitioner is without advance notice.

Your petitioner also respectfully joins with this motion his further motion that the court take whatever steps might be necessary to assist your petitioner in developing the truth concerning any charge to be made at the trial, and to that end your petitioner prays that the court will order the United States attorney to have in court, subject

to inspection of all parties in interest, the dockets, the reports, the files and file covers, and any and all papers which may be in the possession of the U. S. attorney concerning matters which will be touched upon in said trial.

Your petitioner moves to strike the bill of particulars upon the further ground that same fails to comply with the original order and the purpose and intent of bills of particulars, for the reason that same is indefinite and ambiguous. The following is an illustration of that complained of in this regard. We quote from the bill of particulars:

"and the evidence will show also a payment of \$430.00 each week for approximately one year by the defendant Kaplan to the defendants Kretske and Glasser for protection and immunity from prosecution."

The charging part of the second count of the indictment, being paragraph 14, stripped of its legal verbiage, may be summed up as follows:

Your petitioner, together with four other persons named, and others unknown, is alleged to be in a continuous conspiracy in violation of Sec. 88, Title 18, hereinabove set out, and the difference between this second count and the first count is that no law is alleged to have been violated by the conspirators either as a means or as an end, but the second count of the indictment appears to have been 343 framed under that part of Sec. 88 which is aimed as against conspiracies to defraud the United States. Your petitioner complains that said paragraph is vague and indefinite for the reason that it alleges that the conspirators colluded to commit certain frauds against the United States, without giving any further description or identification of the same.

Your petitioner respectfully represents that because of the vague nature of the indictment and the bill of particulars your petitioner can not safely prepare himself for trial and can not go to trial without the safeguards which are supposed to be afforded one in the position of your petitioner.

Your petitioner respectfully represents that, insofar as your petitioner has been able to learn after a careful investigation, no witnesses for the Government will take the stand and undertake to say that he paid any money to your petitioner. Your petitioner respectfully represents that the fact is that no person did pay your petitioner any money for any corrupt purpose at any time.

Your petitioner respectfully represents that the bill of particulars contains the following:

“The persons who made the solicitations are the defendants, Kretske, Kaplan and Horton.”

Your petitioner also respectfully calls attention to the overt acts set out in the indictment, which include a number of conversations participated in by the co-defendants and others wherein your petitioner was not present. Your petitioner is informed and believes that the Government witnesses will testify that the name of your petitioner was used by the Government witnesses and the co-defendants as being person to whom money was paid and to be paid for the corrupt purposes mentioned in said indictment. Your petitioner further respectfully represents that he is informed and believes that the co-defendants will testify in their own behalf and deny participation in any such
344 various conversations or deny the version given by the Government witnesses.

Your petitioner respectfully represents that the evidence concerning your petitioner will be hearsay and not admissible as against your petitioner, but same will be admissible as against those present at the various conversations and will be before the jury in the event of a joint trial.

Your petitioner further respectfully represents that he has every reason to believe that the United States attorney will offer said conversations as against your petitioner with a promise to connect same up with the conspiracy. Your petitioner fears that if he is tried in a joint trial the issues will become so complex before the jury that the jury might lose sight of the fact that your petitioner can not, under the law, be put into a conspiracy by the conduct and conversations of other persons, at which your petitioner was not a party and to which conversations and acts your petitioner never assented.

As a legal proposition, your petitioner is in a different position than any of his co-defendants by reason of the fact that your petitioner is the only person named in said indictment who is alleged to have held public office during the life of said conspiracies. So your petitioner respectfully represents that the questions of law and fact to be submitted to the jury in the above entitled cause will be different as to your petitioner than as to the co-defendants.

Your petitioner further respectfully represents that the

evidence will show that the co-defendant, Alfred E. Roth, was a lawyer practicing at the bar and opposed to your petitioner in many cases. Anthony Horton is a colored man, a professional bondsman and hanger on about the corridors of the U. S. court house. The co-defendant, Louis Kaplan, your petitioner is informed and believes, is a notorious bootlegger with a record as such. As to the co-defendant, Kretske, the overt acts alleged indicate that the Government expects to prove that the money was paid for illegal purposes to Kretske, and your petitioner is informed and believes that conversations had at the 345 time of said payments to be testified to by the Government witnesses will indicate that Kretske said that he was receiving all or part of said money for your petitioner. Your petitioner respectfully represents that there is no truth to said charge and that Kretske will deny that any such conversation was had. Your petitioner further respectfully represents that the defendant Kretske is represented by Joseph Harrington, an attorney at law, who, your petitioner is informed and believes, has already created an ill feeling with the prosecuting attorney and the Judge, and that if your petitioner is compelled to go to trial jointly with said co-defendants, it will be necessary for your petitioner to endeavor to defend himself in an atmosphere of antagonism and in a case wherein the interests of the various defendants are adverse to each other, and under all the circumstances your petitioner respectfully represents that he can not receive a fair trial jointly with his said co-defendants.

Your petitioner respectfully represents that while in the office of the U. S. Attorney your petitioner, at the direction of Judge Wilkerson, prepared the rule to show cause as against E. C. Yellowley, District Supervisor of the Alcohol Tax Unit, which petitioner for a rule to show cause was signed by Michael Igoe, United States Attorney. Your petitioner represented the court in the prosecution of the rule to show cause. As a result of said prosecution your petitioner is informed and believes that the said Yellowley has an ill feeling against your petitioner. That many of the agents who have prepared this case against your petitioner are under the influence of said Yellowley, and are being influenced against your petitioner because of said former prosecution of Yellowley. Your petitioner at the proper time expects to offer proof of the facts and circumstances concerning this matter,

which evidence will be applicable only to the case of your petitioner and only incidentally as to the co-defendants.

Your petitioner respectfully moves that the Government be required to elect as between the counts in the indictment prior to the trial for the reason that two separate conspiracies are alleged and are so different in their nature that the Government should be required to determine before your petitioner is compelled to fully prepare for trial as to which count they intend to rely.

Your petitioner respectfully prays that your Honor will hold that the bill of particulars is too general in its nature and fails to comply with the law and that your petitioner be furnished with a more specific bill of particulars prior to the trial, setting out particularly what is meant by the allegation that "certain frauds" were committed as the object of a conspiracy as referred to in paragraph 14 of each of said counts. And your petitioner respectfully prays that he be granted a severance.

Daniel D. Glasser.

State of Illinois, }
County of Cook. } ss.

Daniel D. Glasser, being first duly sworn on oath, deposes and says that he has read the above and foregoing petition by him subscribed and that the same is true in substance and in fact except as to those matters therein stated to be on information and belief and as to those he believes them to be true.

Daniel D. Glasser.

Subscribed and sworn to before me this 25th day of January, 1940.

Elbert A. Wagner, Jr.,
Notary Public.

347 Thereafter, on to-wit January 29, 1940, comes the United States by the United States Attorney, come also the defendants Daniel D. Glasser, Norton I. Kretske, Anthony Horton, Louis Kaplan and Alfred E. Roth, each in their own proper person and being then and there arraigned upon the indictment filed herein against them, each pleads not guilty thereto. Whereupon Joseph T. Harrington, attorney for defendant Norton I. Kretske, filed his motion for a continuance, and affidavit in support thereof, which motion and affidavit are in words and figures as follows:

348 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

NOTICE.

To Mr. William J. Campbell,
United States Attorney,
United States Court House,
Chicago, Illinois.

Please take notice that on Monday, February 5th at 10 A. M. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Patrick T. Stone or such other judge as may be hearing motions in his stead, in the United States Court House, Chicago, Illinois and ask leave to file a motion for continuance, together with my affidavit in support thereof, at which time and place you may appear if you see fit.

Joseph T. Harrington,
Attorney for Norton I. Kretske.

MOTION.

Now comes Joseph T. Harrington and respectfully requests the Court to grant a continuance to Norton I. Kretske, one of the defendants in the above entitled cause, for the reason that Joseph T. Harrington, the attorney for Norton I. Kretske is engaged in actual trial before the Honorable William J. Lindsay in the case of *People of the State of Illinois vs. Matthew Berg*. That said cause

has been on trial since January 22, 1940 and that said cause is being tried before a jury and it is impossible to continue the said jury trial for the purpose of allowing the said Joseph T. Harrington to appear in the case of United States *vs.* Glasser, et al.

Joseph T. Harrington.

349 State of Illinois }
County of Cook } ss.

AFFIDAVIT OF JOSEPH T. HARRINGTON.

Joseph T. Harrington, being first duly sworn on oath deposes and states that he is the attorney for Norton I. Kretske, one of the defendants in the above entitled cause.

Affiant further states that the said indictment was returned on September 29, 1939 and that this affiant was retained by Norton I. Kretske on October 13, 1939 and immediately after the said retainer took up various legal questions, more particularly a plea in abatement and a motion to quash the indictment; that he was engaged in preparation for trial on October 14, 16, 17, 18, 19, 23, 25, 26, 30 and 31. That the time spent in preparation on the said matter during the month of October amounted to thirteen and three-quarters hours.

That he was also engaged in preparation of said trial during the month of November on the following dates: November 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 16, 20, 22, 24, 27 and 29. That the time spent in preparation during the said month totaled forty-six and one half hours.

That during the month of December there was time spent in preparation on December 14, 15, 18, 19, 26 and 29th. That the time spent during the month of December amounted to five hours.

That during the month of January he was engaged in preparation for trial on the following dates: January 5, 22, 24, 26, 27, 29 and 31, and that the time spent in preparation was thirteen hours.

350 Affiant further states that the indictment in this cause consisted of fifty-six pages and the Bill of Particulars furnished by the Government contains sixteen pages. That the total time spent in the preparation of this case by this affiant has been over eighty hours. That it has been necessary for the affiant to examine various

court records because the charge laid in the indictment, conspiracy, covers the period from March 15, 1935 up until the return of the indictment on September 29, 1939, over four and a half years.

That the said Norton I. Kretske, whom this affiant represents was United States Assistant District Attorney during the period of 1935 to 1937 and handled a vast number of cases for and on behalf of the United States Government. That Daniel Glasser, a co-defendant, was United States District Attorney during the entire time alleged in the conspiracy and handled a vast number of cases in which the said co-defendant Kretske appeared and that it has been necessary for this affiant to check the various court cases for the purpose of ascertaining all the facts surrounding the said cases because of the general charge laid in the indictment and that it is impossible for anybody to investigate the ramifications of the alleged conspiracy and the acts, facts, matters and things which it would be necessary for any attorney representing the defendants to acquaint himself with before he could properly and conscientiously represent the defendant.

This affiant further states that although the motion to quash was overruled on November 16th and the Court 351 ordered a Bill of Particulars to be filed within ten days and this affiant stated to the Court that he would need approximately thirty days from the date the said Bill of Particulars was filed, that the United States District Attorney's office failed to comply with the Court's order of November 16th in reference to filing a Bill of Particulars within ten days, but declined to file any Bill of Particulars, and that no Bill of Particulars was filed until December 28, 1939 which was thirty-two days later than the date upon which the Court ordered it filed.

This affiant further states that when he appeared before the Honorable Patrick T. Stone on December 14, 1939 that the Honorable William J. Lindsay was then considering various motions in the case of People of the State of Illinois *vs.* Matthew Berg, which is the cause in which this affiant is now actually engaged in trial, and that although he demanded and insisted upon going to trial in the cause on December 18, 1939, that the assistant state's attorneys in charge of the prosecution gave out to the newspaper the criminal penitentiary record of Ernest W. Mau who is a co-defendant with Matthew Berg,

and is represented by James M. Burke, and that both Berg's and Mau's defenses are inconsistent and antagonistic, so that this affiant is unable to make any arrangements with Attorney James M. Burke who represents the other defendant to carry on the trial of said cause.

Affiant further states that he has associated with him Bernard J. McDonnell who is unfamiliar with the preparation carried on by this affiant on behalf of Norton 352 I. Kretske, defendant, and that to this affiant's knowledge he has never assumed the responsibility of defending a case where not only the defendant's liberty, but also his professional career and means of livelihood is an issue and that this affiant cannot conscientiously request the said Bernard J. McDonnell to defend the said Norton I. Kretske who is a lawyer duly admitted to practice in the State of Illinois, even though the said Norton I. Kretske might consent.

This affiant further states that on January 29th he appeared before the Honorable Patrick T. Stone and notified him at that time that he was engaged in trial before the Honorable William J. Lindsay, that unless the case was dismissed by the Court at the close of the State's case, that this affiant would be engaged in trial for another two or three weeks.

This affiant further states that on February 3, 1940 he addressed the following telegram to the Honorable Patrick T. Stone, Judge of the United States District Court. Madison Wisconsin:

"I am still engaged in trial before Judge Lindsay. State has not completed its case and unable to state how long before close. Defense will take a week and do not want to inconvenience the Court by a trip to Chicago on Monday unless you have other matters set. Sincerely,
(Signed) Joseph T. Harrington."

This affiant further states that sometime on February 3, 1940 the said Honorable Patrick T. Stone communicated with this affiant's office and left word that the said defendant Kretske and this affiant would have to be ready to proceed to trial on February 5, 1940. That this affiant immediately communicated with the said judge by telephone and when the situation was explained to 353 the judge that the Court stated that certain witnesses for the Government had been committed to the county jail on January 29, 1940 and for that reason the

case would have to proceed to trial and that someone from this affiant's office would have to take care of said defendant Kretske or that Kretske would have to retain another lawyer to proceed to trial, or if he failed to do so that the Court would appoint an attorney. That this affiant asked the Court if it was not possible to grant Kretske a separate trial under these conditions and to proceed to trial with the other defendants, and the Court informed this affiant that Kretske was a lawyer and could therefore do as he pleased. That this affiant informed the Court he had spent a vast number of days in the preparation so that he might answer ready for trial and that no other lawyer, even if appointed by the Court, could conscientiously proceed with the trial of the case before this affiant would be disengaged, and that an attorney who had been appointed by the Court or even who had been retained by Kretske at this late date could not properly prepare a defense, so that the defendant Kretske might receive a fair trial according to the Constitution of the United States, and that any lawyer who attempted to defend the said Kretske under the said conditions would be guilty of violating his oath and also the canon of legal ethics.

That the judge stated to this affiant that he had no right to become engaged on January 22nd because the judge had set the Kretske matter to go ahead for trial on January 29th. That this affiant explained to the Court that the Honorable William J. Lindsay would certainly not grant a continuance in the case of People 354 *vs.* Matthew Berg merely on the chance that a cause had been set on January 29th before the Honorable Patrick T. Stone, which might be continued for any number of reasons.

This affiant further states that the Judge informed him that he did not care anything about the various matters which had been explained to him by this affiant, that he was going ahead and this affiant then stated to the Judge that if he felt this way about the defendant Kretske that the said Kretske should be given a change of venue.

This affiant further states that he has a reputation in Chicago of never asking for a continuance unless actually engaged in trial or on account of illness and that from the year 1915 up until the year 1935 he at no time asked for a continuance on the latter ground.

This affiant further states that he makes this affidavit

for the purpose of putting before the Court all the facts so that the Court may see that a denial of a continuance under the facts above set forth would amount to a denial of a fair trial, which would be a violation of the constitutional rights of the defendant Kretske as set forth in the Bill of Rights of the United States Constitution.

Further affiant sayeth not.

Joseph T. Harrington.

Subscribed and sworn to before me this 5th day of February, A. D. 1940.

Alice B. Kirchman,
Notary Public.

355 Whereupon the following proceedings were had:

United States }
vs. }
Glasser, et al. }

Before:

Judge Stone.

February 5, 1940, 2 p. m.

The Court: I got in touch with Judge Lindsay and there is some indication he may finish that case this week.

Mr. McDonnell: There are some indications.

The Court: That's the impression. They may possibly finish it this week.

Mr. McDonnell: Well, I would like to think that was true, but I will say now, safely, to your Honor—

The Court: Well, the State's Attorney said there was some indication it would. He did not say positively it would, but there was some indication that it might be.

Mr. McDonnell: I can say this, that I am satisfied that it will not be finished this week and that it will not be finished at the earliest until the end of next week. Now, there are many issues in that case. You have two defendants and that case goes back a long time, and there are many things before the jury. I think the defendant himself will possibly be on the stand—Berg—be on the stand two or three days on the question of bringing out his defense.

Now, as I say, again, these witnesses that Mr. McGreal talked about that they have here. They are resident

witnesses, I take it, except those that were brought in 356 on writs of habeas corpus. • • •

Mr. McDonnell: Mr. Harrington takes the position that if your Honor denies him this continuance he wants to return the fee to Mr. Kretske. Now I think Mr. Kretske in view—I say this and I want you to do this in fairness—

The Court: I have this in mind, that Harrington & McDonnell have appeared here, the appearance of Harrington & McDonnell, these is no occasion for him to return the fee. The Court has that in mind and you have entered your appearance in this case for the defendant. Let that appear as a matter of record.

Mr. McDonnell: You will notice that your Honor, and you can look at the papers that are filed. You find a curve in that situation—you find Mr. Harrington appears for himself.

The Court: A regular appearance though.

Mr. McDonnell: In those motions you will find Mr. Harrington is appearing in those by himself. Now, I have never refused an appointment where I have been appointed by the Court.

The Court: I don't want you to refuse. • • •

Whereupon an adjournment was taken to February 6, 1940 at 10:00 A. M.

357 Court met pursuant to adjournment:

United States }
vs. }
Glasser, *et al.* }

Before:

Judge Stone.

February 6, 1940, 10 p. m.

Mr. McDonnell: May it please your Honor, in this matter the motion: (Reading motion.)

Now, in the alternative, your Honor, that motion, I would ask that the order of my appointment be vacated if the Court feels that he did not want to continue this cause on the affidavit, for the reason set forth in the affidavit, and that other counsel be appointed for Kretske. I say that particularly for the reason, and I don't want to accept this appointment—I say particularly for the

reason that the defendant himself objected to the appointment, and under those circumstances I think I am in rather a strange position. I want to be fair with the Court but I don't think I—

The Court: This record shows that you entered your appearance here early in November, 1939, and you and Mr. Harrington as attorneys for this defendant in this case under appointment of the Court. However, if Mr. Kretske doesn't want you as attorney, is there anyone else you want—will Mr. Stewart accept the appointment?

358 Mr. Kretske: Well, Mr. Stewart filed an affidavit.

Mr. Ward: Your Honor, may I say this as a matter of right and not prejudice?

The Court: Go ahead.

Mr. Ward: Hasn't this appearance held out to the Government since the day it was filed—Hasn't it been a signal to the Government?

The Court: Mr. McDonnell is in this case and he will have to stay in it, but I want to give Kretske some consideration here. If he doesn't want Mr. McDonnell is there any reason why Mr. Stewart could not act as your attorney?

Mr. Stewart: May I make this statement about that, judge? We were talking about it—we were all trying to get along together. I filed an affidavit, or I did on the behalf of Mr. Glasser pointing out some little inconsistency in the defense, and the main part of it is this: There will be conversations here where Mr. Glasser wasn't present, where people have seen Mr. Kretske and they have talked about, that they gave money to take care of Glasser, that is not binding on Mr. Glasser, and there is a divergence there, and Mr. Glasser feels that if I would represent Mr. Kretske the jury would get an idea that
359 they are together, and all the evidence—

The Court: How would it be if I appointed you as attorney for Kretske?

Mr. Stewart: That would be for your Honor to decide.

The Court: I know you are looking out for every possible legitimate defense there is. Now, if the jury understood that while you were retained by Mr. Glasser the Court appointed you at this late hour to represent Kretske, what would be the effect of the jury on that?

Mr. Stewart: Your Honor could judge that as well as I could.

The Court: I think it would be favorable to the defendant Kretske.

Mr. Glasser: I think it would be too, if he had Mr. Stewart. That's the reason I got Mr. Stewart, but if a defendant who has a lawyer representing him is allowed to enter an objection, I would like to enter my objection. I would like to have my own lawyer representing me.

The Court: Mr. McDonnell, you will have to stay in it until Mr. Kretske gets another lawyer, if he isn't satisfied with you. (To Mr. Kretske) Mr. Kretske, if you are not satisfied with Mr. McDonnell, you will have to hire another lawyer. We will proceed with the selection of the jury now.

360 Mr. Kretske: I spoke with Mr. Harrington last night and he was greatly surprised that the matter wasn't continued, because he received a message from Judge Lindsay stating that Judge Evans or Judge Stone—

The Court: I asked Judge Evans who called me into this case, to find out how long Judge Lindsay would be in this trial, and the report I got back from Judge Evans was that it would be a week, and possible more.

Mr. Kretske: I understand—Mr. Harrington gave me the impression Judge Lindsay was going to work overtime and evenings in order to satisfy Judge Evans to get here as fast as possible, and when I came into his office and spoke to him last night I apprised him of the situation and he was, well, surprised, because he received a message from Judge Lindsay saying "I got you out of that trouble, and when you get through with this case you can go over there."

There are a lot of attorneys in Chicago and the reason I selected Mr. Harrington was his ability to cross-examine witnesses and elicit the truth, and I believe a great deal of this testimony is perjury, and I would like to have him here, and I know your Honor will give me the opportunity to have him here. I know it is inconvenient.

361 Mr. Ward: A statement like that Kretske just made should call for some answer, that the reason he wants Harrington here to cross-examine the witnesses, the Government's case is practically founded on perjury.

The Court: That is a matter before the Court and not before the jury.

Mr. Ward: It is a simple statement.

Mr. Kretske: I make it in good faith.

Mr. Ward: The Government doesn't base its case on perjury.

Mr. Kretske: Maybe the Government doesn't know.

Mr. Ward: And let me add this, as long as there's a lot of statements being made here. I talked to Wilbert Crowley, the first assistant state's attorney, about this case. I talked to him over a week ago and I said to Mr. Crowley, "I want a fair and honest estimate of the length of time you think this case ought to take before Judge Lindsay, and he told me three days. Now I just add that to the record.

Mr. McDonnell: May I say this in answer to that, and in fairness to Mr. Harrington, Wilbert Crowley is not the trial assistant. He is first assistant state's attorney, and the assistants, Mr. Wright and Thompson are trying the case, and they informed the Court when they started the trial that it would take them about two weeks.

The Court: Mr. McDonnell was in here on a retainer early in November and the letter of December 12, 1939 of Mr. Harrington, which I will file, a copy of which I will file, "If for any reason I cannot be excused I will have Mr. McDonnell, my associate here before you on the question of Bill of Particulars. I am interested enough in this important matter to want to appear in person" (reading) * * * If I am not it will only be because of previous engagement before Judge Lindsay and I am unable to be released from same." And Mr. McDonnell is here under appointment of the Court and he will have to stay in here until Mr. Harrington arrives or until Mr. Kretske gets another attorney.

Mr. Kretske: I never discussed the matter with Mr. McDonnell concerning this case. I went to Mr. Harrington and spoke to Mr. Harrington. I am not bound by—

The Court: On the 29th of January the Court set this case for trial on February 5th. On Saturday noon, Saturday morning, last Saturday morning I talked to Mr. Harrington and told him that this case without fail would go to trial today and if he could not represent you someone from his office could represent you, and if no one from his office could represent you Kretske could hire an attorney, and if he did not, the Court would appoint an attorney.

Mr. Kretske: I would be glad to hire an attorney if I could go into my case with him.

The Court: Mr. McDonnell will do in this case. Proceed with the jury.

Mr. McDonnell: Is it the idea now—rather, first, may we have an exception to the ruling of the Court?

The Court: Yes.

Mr. McDonnell: If your Honor is going to get the jury—

Mr. Kretske: I can end this. I just spoke to Mr. Stewart and he said if your Honor wishes to appoint him I think we can accept the appointment.

Mr. Stewart: As long as the Court knows the situation. I think there is something to the fact that the jury knows we can't control that.

Mr. McDonnell: Then the order is vacated?

The Court: The order appointing Mr. McDonnell is vacated and Mr. Stewart is appointed attorney for Mr. Kretske.

The motion of Mr. McDonnell and affidavit in support of same read as aforesaid are in words and figures as follows:

364 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

MOTION.

Now comes Bernard J. McDonnell, attorney, having been appointed on the afternoon of the 5th day of February, 1940, by the Honorable Patrick T. Stone, Judge presiding, to represent the defendant Norton I. Kretske, and respectfully requests a thirty day continuance of this cause in order that he might properly and adequately familiarize himself with this case and prepare for trial, and in support of this motion offers the affidavit hereto attached and made a part thereof.

Bernard J. McDonnell.

365 State of Illinois, }
- County of Cook. } ss.

AFFIDAVIT OF BERNARD J. McDONNELL.

Bernard J. McDonnell, being first duly sworn on oath deposes and says that he is an attorney at law duly licensed to practice his profession in the State of Illinois and admitted to practice in the District Courts of the United States for the Northern District of Illinois, Eastern Division.

Affiant further states that he is an office associate of Joseph T. Harrington, the attorney for the defendant, Norton I. Kretske, and that although this affiant assisted in the preparation of motions to the indictment, he is unfamiliar with the factual situation in this cause, as to the number of witnesses to be produced by the Government, what the respective witnesses for the Government might testify to, or the nature and character of the exhibits that might be offered by the Government in order to sustain the prosecution of this indictment. That this affiant has not discussed the factual situation with the defendant, Norton I. Kretske, has no knowledge of the number of witnesses that he will produce to maintain and prove his innocence, is thoroughly unfamiliar with what the testimony of these witnesses might be, or the character or nature of the exhibits that might be offered by the defendant, Norton I. Kretske in his behalf.

This affiant further informs the Court that attorney Joseph T. Harrington has made adequate and complete preparation to defend the said Norton I. Kretske against charges offered in the indictment and that said preparation required approximately three months, but that the said Joseph T. Harrington is presently, and has been since the 22nd day of January, 1940, actually engaged
366 before the Honorable William J. Lindsay and a Jury in the Criminal Court Building, Chicago, Illinois, in the case of People of the State of Illinois *vs.* Matthew H. Berg, *et al.*, No. 38-1997 and will be so engaged for an additional period of about three weeks, all of which is more fully set forth in the affidavit of the said Joseph T. Harrington for a continuance filed in this cause on the 5th day of February, 1940.

Affiant further states that the charge offered in the indictment is that of conspiracy and covers a period from March 15, 1935 until September 29, 1939 and that this affiant as a practising lawyer is of the opinion that he cannot properly and conscientiously represent said defendant Norton I. Kretske upon the trial of this cause unless this Honorable Court grants this affiant thirty days within which to familiarize himself with the facts and circumstances surrounding the charge offered in the indictment.

Affiant makes this affidavit promptly upon his having been appointed by your Honor to represent the defendant Norton I. Kretske, and requests in the interest of justice and in order that the defendant might receive that fair and impartial trial which he is guaranteed and to which he is entitled by the amendments to the constitution of the United States of America, that this motion be granted and that this affiant be accorded an opportunity to make proper and adequate preparation in this case.

Bernard J. McDonnell.

Subscribed and sworn to before me this 6th day of February, A. D. 1940.

Charles G. Culver,
Notary Public.

367 Mr. Stewart: Judge, may I say this: I kind of feel I can get as much out of immaterial evidence as the other fellow can and if questions are technically objectionable because they are leading I don't care anything about that and I think we all agree on our side of the table that we have a few objections we would like to have Your Honor hear when the time comes and then if Your Honor indicates that Your Honor is going to be against us on that particular point we are going to make our point for the record and when that comes up again we are going to see if we can't get Your Honor to agree that our rights are preserved so we won't have to continually object on that particular ground.

The Court: I don't think we are going to have any trouble here at all.

Mr. Stewart: I don't think so either.

The Court: Let the record show all adverse rulings carry exception.

Thereupon a Jury was selected, impaneled and sworn.

368 Present:

Mr. Martin Ward, Mr. Francis McGreal, Assistants
U. S. District Attorney.

Mr. William Scott Stewart, Mr. George F. Cal-
laghan, Attorneys for the defendant Daniel D.
Glasser.

Mr. William Scott Stewart, Attorney for the de-
fendant Norton I. Kretske.

Mr. Henry L. Balaban, Attorney for the defendant
Anthony J. Horton.

Mr. Edward J. Hess, Attorney for the defendant
Louis Kaplan.

Mr. Cassius Poust, Attorney for the defendant Al-
fred E. Roth.

And the United States of America to support and main-
tain the issues on its behalf, introduced the following
evidence:

370 GORDON S. MORGAN, called as a witness on behalf
of the Government, having been first duly sworn,
was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is Gordon S. Morgan. I am chief clerk of the
United States Attorney's office, since July 3, 1933. Prior
to that time I was first employed in the District Attorney's
office in 1921 until 1927. Then I was employed by the
Mutual Trust Life Insurance Company for one year. I
have supervision of the personnel of the office under the
direction of the District Attorney. I have charge of the
general office records of that office, also the files, dockets
and all the reports. I have opportunity to supervise and
check reports of United States Commissioners of the
Northern District of Illinois, in all cases tried during my
time as chief clerk.

I know Daniel D. Glasser (identifying defendant Glas-
ser). I know Norton I. Kretske (identifying defendant
Kretske). I have known Daniel D. Glasser since he was
appointed in the office on March 13th, 1935. I have known
Norton I. Kretske a short time prior to that time, in 1934,

probably in October of 1934, was when he was appointed; probably a week or two before that, something like that. Mr. Glasser and Mr. Kretske were appointed Assistants United States Attorney. Daniel D. Glasser resigned as Assistant United States Attorney on June 23rd, 1939, and Norton I. Kretske resigned in April of 1937, I think. During that period the office of the United States District Attorney for the Northern District of Illinois was in Room 826, three wings on the eighth floor of this building.

371 When Mr. Glasser was first appointed he was assigned to Room 859. I should say he remained in that office a few months, off hand. I think Mr. Kretske was assigned to the same room, 859. In connection with my work in the United States District Attorney's office, I personally prepare the record used by each Grand Jury empaneled in that district. I have occasion to instruct the various foremen and secretaries of those Grand Juries as to the place where they would meet, and so on, as members of the Grand Juries, and as to their records. Generally the nature of my duties with respect to the Grand Jury, after a Grand Jury is empaneled by the Court, I take the records that are required to be made out, to the Grand Jury room, and instruct the foreman to select the secretary to keep the records provided by the Department of Justice, the Attorney General's office, and forms that are to be made out in respect to the records indicated, the names of defendants, and so on. I prepare the forms and am familiar with them.

The docket sheet or record that the secretary of the Grand Jury keeps, has space provided for names of defendants, alleged to have committed a crime, and the sections of the statute under which they have been charged with that crime, and the names of the inspectors of the investigation department who appeared in the case; the names of the various witnesses, and the date when a true bill or no bill is voted; the number of votes in which they agree as to a no bill or true bill. Then there is a space provided for the indictment number. That is practically all. In connection with the work of the Grand Juries, I meet and talk to the members and officers every day nearly when they are in session.

372 I pick up the records the secretary writes and check them each day to see how they voted, and notify the attorney who presented the case, give him a list of true

and no-bills. I check that record of the voting until the indictment is returned, and attach that to the indictment to be filed. I have one secretary. There are twelve stenographers in the office. Beginning with the time Mr. Kretske was there, there were about eighteen or nineteen assistants, and about the same number when Mr. Glasser began his employment. I am personally acquainted with all of those assistants.

I have charge of the arrangements the assistants would make for the retention of court reporters. No court reporter is employed by the Government before any court or grand jury without first getting permission from the Attorney General. It was my duty to request authority from the Attorney General after I had talked with the assistants, to determine whether or not it was an important case. The instructions from the Attorney General are that no case will be reported unless it is an outstanding and important criminal case. That certification must be had before a court reporter is employed. Mr. Dwight H. Green was District Attorney at the time Mr. Glasser was employed, and usually he notified or told me the particular type of case that each man was to have in the office. Each man had a certain type of cases assigned to him. Postal laws went to one attorney, liquor laws to another attorney, bankruptcy laws to another attorney, and narcotics to one attorney. The method of the assignments of cases during the years 1935, 1936 and 1937 was substantially the same. During those years Daniel D. Glasser and Norton I. Kretske worked together on the same type of cases, violations of the liquor law, which was assigned to them.

373 When they were first appointed, their office was located in Room 859 and was later transferred to Room 857, the same wing. Room 857 was an office about 20 feet square, something like that, at the end of the hall, in the south wing of the building. Each had a desk and there were probably two tables in there, and one stenographer was assigned to the same room, with a typewriter desk, and there were probably six or eight file cabinets. If the Alcohol Tax Unit sent a case over, we would send it to Mr. Glasser. He was really in charge. I was in charge of the filing room of the United States District Attorney's office at that time in which we keep the files, miscellaneous files and no indictments. We had five clerks in the room at that time. The files in cases that were assigned to Mr.

Glasser and Mr. Kretske were kept in Room 857 until they were closed out, and sent to the file room to file in the regular closed file cabinets.

During the years 1935, 1936 and 1937 the District Attorney's office maintained criminal and civil dockets which are exact copies of the clerk of the courts dockets. Each day a clerk goes to the clerk of the Court's office and copies from the original motion slips and orders that are entered each day. He brings that information back to the District Attorney's office, and types it into each docket, so that the docket in the District Attorney's office is identical with that in the clerk's office. The District Attorney's office at that time kept a commissioner's docket, which is a complete record of cases presented to the United States Commissioner on complaints, setting out the name of the defendant, the Commissioner's docket number, and his own court room, the violation and name of the agent who signed the affidavit, the date the hearing is set, the amount of bond fixed by the commissioner, whether or not the defendant goes to jail in default of bond, pending the action of the grand jury. During the years 1935 to 1938, inclusive, Miss Bess Jeffrey kept the commissioner's docket in the District Attorney's office. I don't know that the commissioner keeps a docket like ours. He makes out a report to be kept in our docket. He keeps entries on his own files in each case. These entries are made by hand and contain the number of the commissioner's case, the name of the defendant, the charge, the name of the agent, the name of the Assistant District Attorney who handled the matter and also the disposition before the Commissioner. During the years 1935 to 1938 Miss Jeffrey's duties were to keep those records every day brought up to date, and just prior to the beginning of a new term of a Grand Jury, I have her prepare a list of all those cases with action pending, which list is given to each Assistant in the office who happens to be assigned to cases that are pending there.

When the indictments are voted, the indictment number and date is written in the last column of the Commissioner's docket sheet, which is kept in the District Attorney's office. If a no-bill is voted that notation is also made at the end of the Grand Jury term.

We make up monthly reports and data for the Attorney General's office. They are card records of each defendant

arrested, on each card is written the history of the case from the beginning to the date of indictment. They are forwarded each month to the Attorney General's office in Washington. All mail in the District Attorney's office is submitted by assistants to the United States District Attorney himself, for signature.

375 Assistants are not supposed to sign their own mail. They have been instructed not to. During the years 1935 to 1938 the assistants were under instructions not to sign their own name to the mail. As a rule, the assistants marked "OK" on the bottom or put their initials on the carbon copy. Usually the stenographers put the assistant's initials and also theirs on the letters. Almost every day letters were sent to the Attorney General of the United States, of which carbon copies were kept in the office. As the mail would be opened in the morning, the time stamp would be placed on each letter, and I usually wrote down on the bottom of the letter, the name of the assistant to whom the matter was assigned.

During the years 1935 up to and including April 1, 1937 I would assign correspondence on new cases in connection with the liquor law to Mr. Glasser alone, and sometimes to both Mr. Glasser and Mr. Kretske. Mr. Kretske made court appearances in this building and sometimes handled cases alone, and would work with Mr. Glasser on certain cases before the Commissioner as well as before various Judges in the building. Miss McGarry, one of the stenographers in the office, was assigned to the room of Mr. Glasser and Mr. Kretske during those years, and she is still employed in the United States Attorney's office.

Each day a court call is made of all cases that are to be called the following day, it lists the cases pending, each court, name of defendant, number of the indictment, the name of the assistant, United States Attorney, and the purpose of the hearing and copies were distributed to the Assistant whose names appeared on the sheet, so they would know what cases were coming up. During the period 1935 to 1938 Michael Intrieri, one of my clerks, checked with various clerks of each court regarding
376 the cases which were to be heard the next day, so that it would be put on this call sheet. He took the motion slips that came from the court at the close of the day, and wrote the continued cases from that in a diary, and from that diary, he writes these call sheets, and

checks them with the clerks to see if they agree on the cases that are to be handled each day.

During these years the office maintained a bond department where schedules were brought in, real estate bonds on cases that were heard before the United States Commissioners were scheduled in that department for the purpose of submitting them to the United States Commissioner, in order that the bond could be approved by him so that he could examine the title to the property. During the years 1936, 1937 and 1938 Miss Buckner for most of the time and Ernest Wandell handled the bond department. He is still so employed. A schedule sets forth the name of the defendant and sureties or persons who are to sign the bond and then the legal description of the property which they submit on the bond.

Direct Examination (Continued) by Mr. Ward.

In the year 1935 the assistants who were assigned to criminal cases were Mr. Canaday, Mr. Eben, Mr. Connaughton, Miss Bailey, Mr. Ward, Mr. Moreschi, Mr. Hart, Mr. Ed. Sullivan, Mr. Raymond Drymalski. Mr. Warren Canaday happened to be the first assistant to Mr. Igoe.

The District Attorney, Mr. Igoe at that time, occupied an office in Room 826, there was a railing separating the entrance in the office with the outer room there, where the public would come in and wait until they were allowed to go inside.

377 Back in the south wing on both the west side and east side were also assistant United States Attorney's offices, and the last office on the south wing was the office which Mr. Glasser and Mr. Kretske occupied, Room 857. The United States Commissioner's office is located on the west wing and it is still there 878, so that it takes only a minute or second, or two or three to walk from the Commissioner's office to Glasser's office, as it was located at that time. There was an adjoining office attached to 857 with entrance from 857 only, in other words if you opened the door to go into Mr. Glasser's office, you are now on the inside of his office, and if you walk over in that corner you can go through another door, which will take you into a separate office, and that office also has a door on it, it is a room where they keep a lot of old files, storage room, and has a desk in there.

Frequently the District Attorney Mr. Igoe had the habit of examining the incoming mail. In the course of handling the District Attorney's business, it is necessary from time to time for assistants to go to Washington, D. C. The District Attorney's office provides a particular person for the subpoenaing of witnesses, making out the papers to be handed to the marshal, and cards and subpoenas. Miss Kyle does that work and prepares the subpoenas, and has for some time.

A no-bill is the final action of the Grand Jury taken, where they decide no prosecution shall lie against the accused, that means that the Grand Jury does not desire to return a true bill, but their successor Grand Jury if it desires to, may do it, and it frequently occurs where a Grand Jury will return a no-bill, and at a subsequent time, on a representation of evidence there will be a true bill returned, against the same accused.

378 The same day or the following day, I notify the assistant District Attorney who presented the case to the Grand Jury that the Grand Jury decided that it will not indict a particular individual, and returned what is known as a no-bill. When the Assistant United States Attorney presents a certain case to the Grand Jury for indictment, he calls his witnesses to the stand after they are sworn by the foreman, and they give their testimony and depart. The assistant departs also, and he knows nothing about what action the Grand Jury has taken until I notify him, and that is usually the following day or in some cases it would be the same day, in the afternoon, if he goes to the Grand Jury in the morning. After the Grand Jury lets me know they have voted a true bill then I notify the assistant District Attorney, who presented the case to the Grand Jury that a true bill was voted, so the indictment can be prepared offhand, and the indictment must be presented before the Grand Jury in open court before the expiration of the term. If an assistant United States Attorney would not have an indictment prepared, and the services of the Grand Jury were terminated, I would notify the assistant and he would have to appear again before the Grand Jury and ask to have the case passed to the next Grand Jury, and state why he couldn't finish the indictment to be filed, and that has frequently occurred.

The minutes of the Grand Jury that sit from time to time are kept in the United States District Attorney's

office, where they are kept from month to month and from year to year.

The document which I have just been handed is a minute record of the Grand Jury for the June term 1935 (Exhibit No. 1).

379 The writing that appears underneath the words,

"United States versus a violation of law, agent or inspector, Assistant United States Attorney, date present, witnesses, true bill or no true bill, date of bill, date of indictment returned in open court" is done by the Secretary of the Grand Jury who presided at that particular term, and those papers are called to my attention from day to day by the Secretary and Foreman of the Grand Jury. By referring to this document I am able to state that on June 6, 1935 Daniel D. Glasser as an Assistant United States Attorney appeared before the Grand Jury in a case known as William J. Workman and thirty-two others, and from looking at that record I am able to state that a true bill was returned by the Grand Jury against Workman and others.

The first letter in Exhibit 2 has the word Glasser written thereon, and is a letter sent from the Department of Justice at Washington, D. C. to the District Attorney in Chicago. The word Glasser is in my hand-writing. The letter dated October 23rd which is all part of this file from Washington, D. C. has the name "Glasser" written thereon in my handwriting. The docket dated August 22, 1935 of the District Attorney's office signed E. C. Yellowley written in red letters "Glasser" is in the handwriting of Daisy Dyke, whose handwriting I am familiar with. She works in the file room. A carbon copy of a letter evidently sent to the Attorney General at Washington, D. C. October 18, 1935 containing the word "Glasser" on there, I know whose handwriting it is. It is Miss Dykes. After looking at Exhibits 3, 3-A to G, I am able to state that the signature M. L. Igoe was put thereon by Miriam Ehrlich, Mr. Igoe's secretary, one of those exhibits contained the writing "Daniel D. Glasser" whose signature I am familiar with, and I would say that is in his handwriting.

380 The document containing Glasser's handwriting is on the stationery of the Department of Justice at Washington, D. C. As a rule the District Attorney's office at Chicago does not ever have any stationery simi-

lar to the stationery upon which appears the signature of Daniel D. Glasser. They only have that stationery when it is brought from Washington by special assistants, and they keep the stationery themselves. I do not know whether or not Daniel D. Glasser was in Washington at the time that letter was written. I have a way of determining that from the time sheets kept in the District Attorney's office for each day and also the consent required to go to Washington. I will consult the records when I leave the stand to find out whether or not Mr. Glasser was in Washington at that time.

Exhibit 4 which has been shown to me is a closed docket of criminal cases from numbers 28,800 to 29,299 maintained by the District Attorney in conjunction with the clerk of the District Court.

When an indictment is voted by the Grand Jury and returned in open court, it is handed to the clerk of the court, I mean the minute clerk who sits with the Judge, and the clerk's office of the District Court numbers the indictment.

The case of United States *vs.* Workman was numbered 29092. This duplicate of the clerk's docket #29092 shows the Workman case and what if any action was taken on it in the District Court. I am able to state from the docket here that the indictment was filed in United States *vs.* Workman on June 28th, 1935, and the last date that any action was taken on that case in the District Court was April 1, 1936. The assistant United States Attorney who represented the Government throughout that case was Daniel D. Glasser. Exhibit #5 is a copy of the indictment in the case of United

States *vs.* Workman #29092. I am able to state 381 from the docket page of the Workman case #29092 that the Grand Jury returned an indictment against H. L. Welch, alias John Pope, alias Yarrío, alias Sheenie Alberts.

Q. Are you able to state whether or not from an examination of that docket what action was taken by the Government in the Yarrío case?

A. On April 1, 1936 an order was entered—

Mr. Callaghan: It appears now that the proof with reference to this Yarrío case was at a time prior to three years before the return of this indictment; for that reason the defendants object to it in this connection, and make the further objection, the documents which the

witness is now testifying from are not the best evidence of the facts.

The Court: What is the exhibit you are offering?

Mr. Ward: It is a docket which the witness stated, without objection, is a duplicate of what is kept in the District Court Clerk's office. I am asking him for the purpose of the record, to get this order that was entered on that particular date, with of course the promise to the Court we will show it is the same party mentioned.

The Court: Objection overruled.

Mr. Callaghan: Exception.

The Court: Let the record show all adverse rulings carry exceptions with them. There is no need showing an exception each time. The record shows that I announced that earlier in the trial.

The Witness: This record shows on April 1, 1936 an order was entered in the District Court, dismissing for want of prosecution one H. L. Welch, and E. L. Welch. The rules of the Attorney General of the United States are that all indictments to be dismissed must first have the authority of the Attorney General of the United States, and a letter must be written by the District Attorney of the particular district where the indictment is pending, stating all the facts and reasons for dismissal of the indictment, and if the Attorney General consents to that dismissal in due course the District Attorney receives a letter to the effect, granting that authority, and then the assistant appears in court, and in compliance with that direction, the indictment is dismissed. I do not know of any rule which permits an assistant United States Attorney to dismiss an indictment other than that rule, that is the only rule we have. I am able to state from an examination of Exhibit 2 whether or not Glasser ever corresponded with the Attorney General's office to secure a dismissal of any of the defendants named in the Workman indictment. There is a carbon copy of the letter addressed to the Attorney General for permission to dismiss certain defendants in this case #29092. The initials on the carbon copy show that the letter was dictated by Daniel D. Glasser, and typed by Ernest P. Wandell who performed secretarial work. The exhibit indicates that Mr. Glasser requested leave of the Attorney General to dismiss defendants in that indictment on four occasions, and on each of these occasions Mr. Glasser dictated the letters, three times to

Ernest P. Wandell, and one to E. B. which was evidently dictated in Washington, as it is on Washington stationery. Exhibits 3-3-F has the handwriting "Delivered in person to Mr. Glasser 10-31-35". I do not know whose handwriting that is. I never saw that notation on a letter from the Attorney General's office before or one which the Attorney General would dictate and send to Chicago. Government's Exhibit 5 is a photostat—it does not show where it is written and on the bottom is the writing "Delivered in person to Mr. Glasser". It is directed to Michael L. Igoe, Esquire, United States Attorney, Chicago, Illinois, and it has the signature of Joseph B. Keenan, who was an assistant United States Attorney who was in Washington at that time.

383 I became acquainted with a man named Eckstone in an official way when he was foreman of the April 1937 Grand Jury. His name was Sidney S. Eckstone. When he was foreman of the Grand Jury he used to come into the office to see me. His name was suggested to me by Mr. Glasser, he would make a good foreman. Item 13 in the Grand Jury minutes for April 1937 is the thirteenth matter which the Grand Jury had before it, and indicates that Glasser was before that Grand Jury on that occasion, in the case of *United States vs. Bernard Helfer, Nathan Helfer, Daniel F. Mortana, Rose Mortana, Louis Martini, Ben Meyers and Mary Doe*. It indicates that on April 7, 1937 a no-bill was voted. From an examination of the Sidney Eckstone Grand Jury records I can tell there were twelve no-bills returned in cases in which Glasser represented the Government. Glasser presented twenty cases to the Eckstone Grand Jury.

The Court: That is the total number of cases presented?

A. By Mr. Glasser.

The Court: To this Grand Jury.

A. Yes, sir.

The Court: And of the twenty there were twelve No Bills?

A. Yes, sir.

The Witness: Of the remaining eight none were withdrawn. The Grand Jury of which Sidney Eckstone was foreman was empaneled on April 5, 1937 and discharged on April 22, 1937, that is about seventeen days. I can tell from Exhibit 6 that they were liquor cases, that is

violation of the Alcohol Tax Law, Title 26 of the United States Code. I know that in the time that Sidney Eckstone was foreman of the Grand Jury he consulted with Daniel Glasser from time to time, sometimes in Mr. Glasser's office, and sometimes in the front office. It is not the usual thing for an assistant United States Attorney to suggest the name of a foreman of a Grand Jury, as a matter of fact, it never occurred in my experience before.

(Witness withdrawn.)

WILLIAM WORKMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is William Workman, I live at 6840 Wabash Avenue, since May 1938, previous to that I lived at 7251 Vernon Avenue, I am the same William Workman that was a defendant in D. C. 29092, United States *versus* William Workman, where I was indicted with a number of other people in connection with the still over at 973 Cullerton Avenue. In 1934 my business was general merchandise warehouse located at Cullerton and Morgan Street. Exhibit 7 is a true and correct representation or likeness of the warehouse building that I conducted my business in in 1934 and 1935. The name of my company was Continental Warehouse Company, a corporation incorporated under the laws of Illinois. I was the principal stockholder. The capital stock of the corporation was \$27,500.00. I think there were about 1700 shares and I held most of the stock, two other people also held stock, I think one was Mr. Robertson, and Mr. Tinsley. I became acquainted with a man named Mathews, at the warehouse the early part of 1935 when I was contemplating the sale of the warehouse company. He did not associate with me in the conduct of the warehouse business there. He was looking over the business to see whether it would be a profitable investment for him. He was in the warehouse. In connection with my warehouse business, I had occasion to have a bank account. Mathews had something to do with that bank account. After we made negotiations there, I turned

everything over to him, and I think he was the man that later signed the checks after January 31st or 1st of February, 1935.

385 Mathews had a share of stock in that corporation.

I turned everything over to him. The office that I had in this building was located on the second floor. I think there were six floors in the building. I had track facilities in connection with my warehouse. That was for receiving in carloads any merchandise. I had a loading platform in the rear of the warehouse, that is where the cars came in, and a freight elevator which operated from the first to the sixth floor or basement to the sixth floor. I was present in and around the warehouse the first month of 1935 up until I think it was the 19th of February, the first I heard or had knowledge regarding the violation for which I was subsequently indicted was about the middle of January, I think. I surrendered myself to the Alcohol Tax Unit in connection with that violation. I know a large still was discovered in my warehouse. I saw the still after it was discovered. Exhibits 8, 9 and 10 are true and correct representations of what was in my warehouse at the time of the discovery of the still. These pictures look like what I saw after the raid. Government Exhibits 11, 12, 13, 14 and 15 are true and correct representations of what I saw there after the raid. Exhibit 16 is a true and correct representation of part of the sixth floor of my warehouse at the time in question. Exhibit 17 is a true and correct representation of the fifth floor of my warehouse. Exhibit 18 I don't really remember these things here or the numbers on it. Exhibit 19 is a picture of Steve Schiavone. I did not know Steve Schiavone in the early part of 1935 or before that. I became acquainted with him about the latter part of February. I was represented in my case in the Federal Court by Mr. Hess, I was sent to his office by somebody, I don't know who it was, I was not sent there by Schiavone. I don't recall at this time who sent me to Mr. Hess's office. I recall being in Judge Philip L. Sullivan's courtroom when the case was disposed of. On that morning I was in Mr. Hess's office, I think we came together, we went directly to Judge Sullivan's courtroom.

386 Q. And do you know Glasser, Daniel Glasser here, sitting at the table, (indicating)?

A. Yes, sir, I know of him. I never met him—

I saw him in the court-room at that time. I know who he was representing there, the Government. I did not know that I was going to enter a plea of guilty before coming there that morning. I did not know at any time before I entered my plea of guilty before Judge Sullivan that I was going to plead guilty that morning. No one consulted me or asked me or told me to plead guilty. My attorney entered my plea of guilty. I don't recall exactly just what Mr. Glasser said to Judge Sullivan, but what he did say wasn't very much. I was placed on probation. I don't remember at that particular time Mr. Glasser showing Judge Sullivan any of these pictures that you have shown to me, and I was in Glasser's and Hess's presence throughout the entire proceeding. I did not have a conversation with either Glasser or Hess after I left the court-room, after that order was entered. My bond was \$2500.00, I did not pay for it, I don't know who did, or who arranged to get me out on bond, I do not know anything about the circumstances under which I was released on bail. I was in custody of the marshal several hours before I was released on bail. My bondsman was a bonding company.

I know of the defendant Kretske. I don't remember seeing him present before the United States Commissioner when my case was called there. He may be there. I have seen Mr. Kretske around, but at that time I don't remember whether he was at the time that I was before the Commissioner. I don't know what Kretske was doing in there at that time. I took it for granted that he was Mr. Glasser's assistant. He appeared to be with him very often.

387 I know a man by the name of Young. I first became acquainted with Young at the Continental Warehouse located at 12th and Canal Street. He was employed by me as a clerk, Young was arrested in this case. I was in court with Young. Young was on the payroll for \$25.00 a week. He was a traffic man at the warehouse and done general clerical work. I had occasion to use my track facilities in operating my warehouse, receiving carloads of merchandise. Daniel Glasser never talked to me about the case. He never asked me anything about my warehouse over there or how it happened that a still was found in it.

Cross-Examination by Mr. Stewart.

The Federal Agents asked me a lot of questions, and they were preparing a case against me, and when I was arrested I was taken over to the Alcohol Unit place, over in the new post-office, I think it was Mr. White and Mr. Hambeck who were the agents who arrested me. I answered all their questions. I told them I didn't even know the still was in there until the raid. I know Schiavone is dead, I don't know how long, he wasn't dead at the time I was arrested. I did not tell the agent who questioned me that I knew Schiavone, I didn't know him at that time. The agents asked me questions concerning who might be the owners of that still found in my warehouse. I don't remember what my answers were at that time. It was a denial of any associations with anybody who might have put the still in, and I denied knowing anybody who might have operated the still. My position with the agent was that I was a business man, and I had just been the victim of somebody who came in to use my place. That was my attitude. That is right that I told the agent that this Mathews I spoke of was a man who had rented this space that was later used for this still. Mathews has never been arrested as far as I know in this case. I think the agents asked me the question who he was. I was not able to give the address as to where 388 he lived, or as to where he might be found. I was not able to help the agents at all. They did not say to me he was a fictitious person that I was inventing. They did not say it was an alias for somebody else. I don't know anything about this Mathews. I knew where he came from, he told me he came from New York, that is the only evidence I had, what he told me. He gave me reference, I did not give the agent those references. I didn't have them. I have not found them since, so I don't know now what the references are. They have disappeared, and so has Mathews as far as I know, so there was no occasion for Mr. Glasser to ask me any questions. He was just representing the Government as an attorney in my case, and as far as I observed, he did that in a proper manner. I am 55 years old, I was born here, I am married, and have children. I had previous trouble with the law, there was a stolen truck load of merchandise delivered at my warehouse at one time, and I was ar-

rested in connection with it by the United States Government. The case was dismissed. I didn't know anything about it.

Q. And you claim you don't know who might be on the truck, is that it?

Mr. Ward: He said it was dismissed, Your Honor.

The Court: Objection sustained.

Mr. Stewart: How long ago was that?

A. That was about in 1932 or in 1933.

Q. You are not able to give us any information about who was connected with that truck—

Mr. Ward: Wait a minute, I object to that, Your Honor, as improper.

The Court: Objection sustained.

Mr. Stewart: Well, in that case, did you go into the Commissioner's Court?

Mr. Ward: Same objection.

389 The Court: Same ruling.

Mr. Stewart: Your Honor, may I say—

The Court: That hasn't any bearing here.

Mr. Stewart: I would like to show the familiarity the witness has with court procedure. Mr. Ward tried to give the impression he plead guilty without knowing what he was doing, and he is in the class of an accomplice, and I understand I have a wide latitude, and he is familiar with procedure.

The Court: How often have you been in the court room?

A. Once.

Q. Was this the first time when you were involved in this stolen car?

A. No, that was the first time I was ever involved.

Q. That was about in 1932?

A. 1932 or 1933.

Q. The next time was the case we are talking about?

A. Yes.

The Court: All right.

Mr. Stewart: May I ask questions about how that case was handled, just briefly?

Mr. Ward: It is not admissible on any theory of law.

The Court: Objection sustained. Just a minute, I ruled on it. When I want any discussion I will ask for it.

Mr. Stewart: Now, Mr. Workman, how many hours were you in the custody of the Marshal or the Agents over

at the new Post Office, when you were arrested in this case?

A. Oh, about an hour or more.

Q. And to sum that up, were you able to give them any information that would lead to who the guilty parties might be with reference to operating and building that still?

A. No, sir, I was not.

390 I was not arrested at the premises where the still was. I was not arrested when I was there. It was a police raid. I surrendered to the department of the Alcohol Unit. The police did not have me first. I surrendered a week after the raid. I was not in my usual place of abode during that time, I was staying out of sight, I had been around the premises though all that time before the raid came there. That was my own business, and I was there daily on business days. It was a large still, it had machinery that extended from one floor to another, my general knowledge was such that I knew I was a defendant in a Federal Indictment, eventually I knew that. I went to Mr. Hess and arranged with Mr. Hess to represent me as a lawyer in that matter. I did not pay Mr. Hess some money. I don't know if any was paid to him. I understood he was to be my lawyer, and I never paid any money to him. I did not give any money to anybody for any illegal purpose. My relationship with Mr. Hess was that of attorney and client, as far as I observed, his conduct was proper in representing me. I had been in court on the arrangement and various times before I finally went there and pleaded Not Guilty. I don't remember how many times but there were several. I knew in a general way that if I had wanted to I was entitled to a Jury trial under a plea of Not Guilty, so when Mr. Hess stepped up and told the court he was going to enter a plea of guilty, I thought he was using his best judgment for my best interest, and I knew if I wanted to I could have told Mr. Hess I did not want to plead guilty, and so tell the Judge and obtain a Jury trial. I knew that. I don't think Mr. Hess at the time my plea of guilty was presented, told Judge Sullivan, that the circumstances surrounding my connection here, the fact that I was lessee of the property, and various things were such that if the case went to a jury, the jury most likely would find me guilty.

391 I did not testify at that hearing, I was satisfied to let my lawyer talk for me, and I understood right there at the hearing, at the end of it, that the Judge was going to grant me probation. He so announced from the bench. I was satisfied with that disposition. It was better than going to the penitentiary. I did not ask the Judge to be permitted to withdraw my plea of guilty, or make any complaint about my plea of guilty. I was satisfied. I was on probation for one year, and satisfied the requirements of the probation, and eventually was discharged.

When I was originally arrested and was over to the office of these Federal Agents I don't remember whether they showed me the picture of this man Schiavone in the several pictures that I saw. I won't say it was not there. They asked me about various people, and whether they were connected with that still. Schiavone might have been one of the names. To all the names, I gave the same answer, I didn't know them. After I was discharged from probation, I did not have occasion to come down to the District Attorney's office. I did not have any complaint to make to anybody down here in this building, so the first thing I knew that some further information was wanted, concerning this investigation and this trial was a couple of weeks ago. Mr. Ward saw me. He was the first one to see me in his office in this building. I received a notice to come down from some agents who came out to where I was living and told me Mr. Ward wanted to see me. I did not go along with them. I don't remember whether it was the next day or not that I went down, but I think it was. Mr. Ward had a stenographer when I was present, and he asked me questions about that still out there.

Mr. Stewart: Mr. Kaplan, will you stand up, please, and come over here? I am indicating one of the defendants named Kaplan.

(Defendant Kaplan arose.)

I do not know him, I never saw him in my life, to my knowledge.

392 I never saw him in connection with that still.

Mr. Stewart: That is all. Mr. Horton, I will ask Mr. Horton to stand up.

(Defendant Horton arose.)

I have seen him before around the Commissioner's of-

fice at the time my bond was signed. In so far as I know he didn't have anything to do with making my bond. I signed some papers I don't know what they were. I was in business quite a while, that was a general warehouse business. Any one who wanted to keep canned goods could come over and engage enough space to store them, for whatever time they wanted, and I would issue a regular warehouse receipt. That was my business from 1916 to 1935.

Mr. Stewart: Mr. Roth, would you be good enough to stand up?

(Defendant Roth arose.)

I do not know him, I never had any dealings with him.

Examination by the Court.

I was in court the day the plea of guilty was entered. The Judge did not ask me any questions. That was rather an important day in my life. What happened was very brief, I really don't remember what my attorney said to the Judge, that is quite a ways back. I was probably four or five feet back of the attorney, and did not catch everything that was said. I understood my attorney pleaded me guilty. He talked to the Court. That is about all he did say, there was very little said. I knew when I went into that court room that I was confronted with a possible jail sentence. I was very much interested in the case. I did not catch everything that was said by my attorney and Mr. Glasser.

Q. You do remember these pictures were not displayed before the Judge,—he did not see these pictures?

A. No, he did not, not that I know of.

393 Q. Was anything said to the Judge about the size of the still?

A. I don't think there was.

Redirect Examination by Mr. Ward.

I had something to do with the collection of the rent for the premises where the still was housed. I was receiving \$1500.00 per month as rent. It was paid to me in the lobby of the Merchandise Mart on several occasions. It was paid to me in cash. I think the man on

Government Exhibit 19 is the man who paid it to me on two or three occasions.

Q. He is the man that paid it to you on two or three occasions?

A. Yes, sir.

On the two or three occasions he paid it to me in the lobby of the Merchandise Mart.

The Court: Q. Is that your office?

A. No, sir.

Mr. Ward: The Government has handed to the witness No. 19, it being a picture of Steve Schiavone.

The Witness: I think I receiver six payments of rent for the place.

Examination by the Court.

The payments were \$1500.00 each. I do not own the building I was subleasing it. My annual rent was \$1500.00 per month. I was paying it to the Lovejoys.

Redirect Examination by Mr. Ward (Continued.)

I know a man by the name of Mr. Ramsey. I never say him at the still premises. He is the man that paid me the rent. The man that I knew as Ramsey, then, is Steve Schiavone. I had occasion to hear the indictment read in which I was put into with thirty other defendants, in the Commissioner's office. I take it for granted that a complaint and an indictment are both alike.

394 I don't think I ever saw a copy or original of the indictment that was voted against me and these other persons. I don't think I ever discussed it with my lawyer, Mr. Hess, so that when I pleaded guilty before Judge Sullivan, I did not know what was in this document at all. I am not able to tell what Schiavone's nationality is, unless he is an italian, but I am just guessing that from his appearance.

Examination by the Court.

My office was at the warehouse at the time. I don't know why the money was not paid to me at the office. I would get a telephone call to come down and collect the rent. At that time I had no suspicion that my premises were being used for the operation of a still.

Mr. Ward: Q. Now, did you discuss with any person, your case? I don't want you to say what was said, but did you discuss with any person anything about your case before you went to Ed Hess' office?

A. No, I don't recollect that I did.

Q. Did Ramsey talk to you about it?

Mr. Stewart: I object. He said he did not recollect that he did. The prosecutor has no right to cross-examine his own witness.

Mr. Ward: Q. Would it refresh your recollection if I were to say to you that you had a conversation with me in my office, in which you told me that Ramsey was Schiavone and that you talked to Ramsey before you went to Ed Hess' office? Would that refresh your recollection?

Mr. Stewart: May I have a ruling, your Honor? That is not proper.

The Court: Objection overruled.

Mr. Stewart: Exception.

The Court: Are you referring to a conversation you had recently?

395 Mr. Ward: Yes, your Honor.

Q. Would it refresh your recollection if I were to tell you that you had a conversation with me in my office, in which you said to me that you talked to Ramsey, the party whose name is mentioned in the indictment here; and that after talking to him, you went to Ed. Hess' office?

The Court: Have you any recollection of that conversation, Mr. Workman?

The Witness: A. Yes, sir.

Q. What is the fact?

A. I did talk to him.

Q. To whom?

A. To this here Ramsey.

Q. Yes?

A. I met him on the street.

Mr. Ward: Q. And it was after you talked to Ramsey that you went to Ed. Hess' office?

A. Yes, sir.

Recross Examination by Mr. Stewart.

Right now is the first time in my life that I testified or told anybody who was connected with the Government here that a man whom I now identify as Ramsey

or Schiavone paid me the rent down in the Merchandise Mart. I probably told Mr. Ward last week when he sent for me. That is the first time that I told anybody. The first time I talked to Schiavone or Ramsey was after the raid was made, to go to Mr. Hess' office. I do not know that I have told that to anybody in all these years, and all this time I was on probation since I pleaded guilty. It has been so long since then. I might have been asked at the time I was questioned by the Alcohol Tax Unit Agents, who paid the rent for the place that was used for the still. They asked me that several times at the hearing. I think the record will show that I told them

I received the money in currency downtown in the Merchandise Mart. I don't know for sure that I told them that. I would not say positively that I did or did not. The man that paid me the rent was this Mr. Ramsey. I don't remember that I denied that when Mr. White asked me. In five years one can forget a lot of things. I recall what I testified to today. I remember you asked me a while ago, "Isn't it a fact that the agents asked you a lot of questions and you said you knew nothing about the identity of the persons that were conducting and operating that still." When the agents including Mr. White asked me who paid the rent, I told them I didn't know who it was, and when they showed me a picture I did not say "It's no use showing me a picture because I can't identify them." At the start I looked at the pictures shown me in an effort to identify them. At that time I did not identify the picture of Mr. Schiavone as being the man who paid me the rent, which was when I was up in the Alcohol Tax Unit after I had surrendered myself, shortly after the raid. I don't think I was concealing anything. I never saw that picture up there. They never showed me this picture. I don't remember ever seeing the picture of Schiavone there. They did not show it to me. At that time I did not know Schiavone. I knew him under the name of Ramsey. I knew him up to February of 1935. I don't know when he died. I met him along about September or August, the raid was in February of the next year after I met him. It is not a fact that during the time I was on probation I was receiving \$25.00 a month from this man. I was receiving \$25.00 a week at a certain place where I went to pick it up, at Van Buren and Clark. That continued about six or eight months. I did not tell Mr. Ward

that when he was questioning me. He did not seem to know about that. I only told him things that he seemed to know about, so while I was on probation after I pleaded guilty for some months I was picking up \$25.00 at a place where I was told to go. I don't know who left it.

397 The Court: Who told you to go there?

A. This man Ramsey.

Q. Ramsey?

A. Yes, sir.

Recross Examination by Mr. Stewart (Continued).

I had no understanding at all as to how long that was to continue. When they discontinued leaving the money I got a little put out about it, naturally, and was mad at those people who were supposed to leave it. I naturally thought they should not treat me that way. I figured this case cost a lot and I was the loser. I did not immediately want to go down and tell on them when I found they were not leaving the envelope. About a year and a half afterwards I made up my mind that I would like to tell on them. I went to Mr. Yellowley's Tax Division office. I saw Mr. Herrick and Mr. Yellowley. I did not tell them they were leaving the envelope for me. I told them why I was mad at them. I told them that I was willing to furnish information as to who was operating that still on my premises. At that time, I was willing to tell all I knew. They did not take me anywhere before any Commissioner. They did not take me anywhere where I could give testimony before anybody. They did not take me before any Grand Jury. They did not take a statement. They did not even take a statement.

Q. Didn't seem to be interested?

A. Interested to the extent if I could produce proof.

But my word alone they did not regard as proof. They did not tell me that in so many words, but that is what they meant. It might have been because I told so many different stories.

Redirect Examination by Mr. Ward.

The agents that came out to see me had a Grand Jury subpoena. I went to the District Attorney's office and after that was taken to the Grand Jury and gave cer-

tain testimony there. I was in the city at a fixed
398 place of residence, all the time when I was on probation. That place of residence was on Vernon Avenue. I did report to the probation office for one year in compliance with the order of Court in this building.

Q. Now, between the time that you were placed on probation before Judge Sullivan, down to and including the 31st day of March, 1939, did Daniel Glasser ever call you in the office to talk to you about this case?

Mr. Stewart: I object. That has been gone over. Mr. Ward is trying to give an inference why Mr. Glasser should call up the defendant and have him come in,—especially on redirect examination and redirect after recross.

The Court: You asked if Mr. Glasser ever called him in the office?

Mr. Ward: Yes, sir.

The Court: Q. When was the first date?

Mr. Ward: From the time he was placed on probation before Judge Sullivan, down to and including the 31st day of March, 1939, which I expect to show is about the time Mr. Glasser ceased to handle Alcohol cases in our office.

The Court: What occasion would Mr. Glasser have to call him in after that date?

Mr. Ward: It is merely a circumstance to show interest. He asked what he told the agents, and I expect to show—

The Court: Never mind. Objection overruled. He may answer.

The Witness: A. No, sir.

Recross Examination by Mr. Stewart.

I never told Mr. Glasser anything in my life, either the truth or a lie.

Examination by the Court.

I was not doing anything for the \$25.00 a week that was being paid to me. I was supposed to keep my
399 mouth closed. I kept my mouth closed until they quit paying me, a year afterwards. They did not pay me for a year afterwards, ten months afterwards or nine.

Witness Excused.

FRANK L. WHITE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Frank L. White, I live in St. Paul, Minn. I am a special investigator of the Alcohol Tax Unit, of the Treasury Department, have been with the Government since February, 1925. I know the defendants Daniel Glasser and Norton Kretske. I knew Mr. Glasser from about the time he came in the District Attorney's office, which, as I recall was about 1935; and I have know Mr. Kretske about the same length of time. They occupied Room 857 in the United States Attorney's office in this building. At first they did not occupy the same office, as I recall, Mr. Tappy was in the room alongside of that with Mr. Glasser, when I first became acquainted. I believe in June, 1935, Mr. Tappy was not there. I believe they were both in the same room at that time. I had frequent occasions to visit both Mr. Kretske and Mr. Glasser at their office, in my official capacity as investigator, and discuss with them various cases. Often I would go before the United States Commissioner. Mr. Glasser handled most of the cases, however. On a few occasions Mr. Kretske would be with him, but I think that was the exception to the rule, as I recall it. I know Mr. Workman, the witness who just testified here. I had occasion in 1935 to take part in the investigation of a still which was discovered at 973 Cullerton Avenue, Chicago. I visited the premises immediately after the raid. I was accompanied by several investigators. After that I was more or less active in the investigation of that case, and a report was made to the United States Attorney's office regarding the result of my investigation.

400 The report was forwarded to Mr. Glasser. I know a man by the name of Albert Yarrío. He was called Sheenie Alberts. That was the most common alias I have known him under. I had occasion for searching for Yarrío in connection with the investigation of the still at 973 Cullerton Avenue, the police helped me. When Yarrío was arrested I talked to him at the Maxwell Street Police Station. Later I returned to the Maxwell Street Police Station, and I took Yarrío to the Alcohol

Tax Unit, that was on Monday, November 18, 1935. I knew at that time that Yarrío had been indicted by the Federal Grand Jury. I became acquainted with that fact shortly after I appeared before the Grand Jury on the 6th of June, 1935. I didn't start to look for Yarrío right at that time, the still at 973 Cullerton Avenue was a 10,000 gallon capacity. It would hold 10,000 gallons of first run alcohol to be run the second time. I think they could cook that off in 24 hours. There was a 5,000 gallon first run still there also, that is the one they ran the mash into and when the product came out of that, it would run around 150 proof. That product would be put into the other still and re-run to bring it up to a higher proof, around 190. The tax would be \$2.00 on 100 proof, so that on 190 proof it would run close to \$4.00 per gallon. Exhibits 20 to 34 inclusive are true and correct representations of what I saw when I visited the still the first time. The first is a picture of the still as I saw it, the rest are pictures as it was destroyed. After this, I testified before the Grand Jury. Mr. Glasser presented to the Grand Jury the evidence of that violation, which was known as the Workman case. Our duties do not terminate after we submit our reports to the United States Attorney. We are supposed to keep in touch with the assistant, but the control of the prosecution is in the control of the United States Government from that time. I believe I was before Judge Sullivan when the Workman case was disposed of. After Yarrío was taken to my office he was taken to Mr. Glasser's office. I saw Mr. Glasser at that time, it was on the day Yarrío was arrested, in November of 1935.

401 Mr. Glasser had a conversation with Yarrío in my presence, that was Sheenie Alberts. The conversation was very short, as I recall. He said "So you are Albert Yarrío" something like that. He asked us if he had made any admissions or statements, and I told him he refused to do that. I asked him if he cared to make any statement, and Yarrío said no, that is all I recall. Mr. Glasser arranged for me to get a Marshal, and have the Marshal serve the warrant on Albert Yarrío. I made court appearances in this case. I was in court on October 28th, 1935, that is one day I recall, I have my notes on, I believe I was in court when this case first came up on plea and arraignment, on October 28th, the case against R.

Shurig and Chicago Steel Tank Company, Louis Lehman and Lehman Bros. were all dismissed by Judge Holly. That is the only time I was in court that I have any notes on when anything occurred. I had conversations with Mr. Glasser during the time the case was pending. On June 17th I came to Mr. Glasser's office with Mr. Collier of the Alcohol Tax Unit and they discussed the overt acts in the case. I don't believe Mr. Glasser ever discussed with me the proposition of trying that case. I know how the case was disposed of through checking the records in the Clerk's office. Without checking the records, I have no knowledge about the disposition of the case. Investigator Hambeck assisted me in this investigation. He was with me on some occasions. There were other investigators before the indictment. At the time of the indictment there was nobody that I know of, all the other investigators contributed to the report.

Cross-Examination by Mr. Stewart.

The original raid on the still known as the Workman still was made by the police of Chicago. Sometimes the Police Department go in themselves and raid stills, sometimes that is the first knowledge we have that there is a still in the location, and that is the situation we had in the Workman case.

402 I understand the Federal Agents don't stop to find out whether a raid is legal or not. The night of the raid I learned that Workman was the man who leased the premises, and sub-let to these boot-leggers, as I recall he was arrested by the police the same night. I don't think the police had him in custody at the time we got there. They may have, he may have been arrested at the time of the raid by the police, I am not sure. I questioned him at the place where the raid occurred at 973 Cullerton first, we questioned him that night, he was turned back to the police to be locked up for the night. I questioned him again at the office of the Alcohol Tax Unit. Before that time I did not know Schiavone personally, I knew him by reputation, I knew he was a boot-legger, and I was seeking evidence against him. Up to that time I had no evidence against him. I don't think he had been arrested before on charges of violation of the Alcohol Tax laws, but I am not sure about it, but at that

time he was known to me and other agents as one engaging in that illicit traffic, and I suspected he might be one of those connected with the Workman still. I showed his picture to Workman, it was a group picture that included Schiavone. He said he did not know any of them. Workman told me who paid the rent for the premises of the still. I don't remember the name. I have refreshed my recollection to some extent. After looking at the report I find the first time I questioned Mr. Workman was in the office of the Alcohol Tax Unit on February 27th, 1935. I remembered now that while his coat and car were at the place, he was not present. He was surrendered at the Alcohol Tax Unit by an attorney named Hess on February 27th, 1935. The raid was on February 19th. I took a statement from Workman in the presence of Mr. Hess. After it was type-written I asked Mr. Workman to sign it, and Mr. Hess told him not to. The substance of the statement explained the renting of those premises to affirm that he said at that time he knew was the 403 Central States Confectionery Company. He said George B. Mathews was the man who signed the lease. He said he rented those three floors for \$1500.00 per month. I don't recall without having the statement here where he said he received the rent. I suppose the statement is in the office of the Alcohol Tax Unit. I am now working in a different district, the 12th district, in St. Paul, Minn. I am here under subpoena. Workman accompanied us to the warehouse, and gave us the corporation papers and some blank checks which were signed, as I recall, by George Mathews. Any information further than that given by Workman was not material at that time, in helping me determine who was the owner and operator of that still. Exhibit #35 is indictment #28870. I never saw this before, so I don't know anything about it, it looks like five persons were indicted by the Grand Jury in April of 1935, after I appeared before the Grand Jury. Shortly after this raid and at that time Mr. Tappy was in charge as assistant District Attorney, I could not tell what date Mr. Glasser came in. The first presentation resulted in the indictment of William Workman, Bernard Haas, Stevenson and Edward Young and Tony Williams. That indictment was for the purpose of avoiding a Commissioner's hearing. We do that sometimes because we don't want to discuss our evidence in a hearing. I never saw #35 before until this minute, it must be an

indictment that was returned as a result of my work with Mr. Glasser. It mentions people that are mentioned in my report.

I have heard that Mr. Glasser secured the services of an agent by his request, Mr. Hamback, who helped him work up this case, but I don't know. I was out of town and heard that Mr. Hamback was assigned to Mr. Glasser, but I don't know if he was there. I did not go into Mr. Glasser's office while Mr. Hamback was making his headquarters there. Mr. Hamback did mention to me that he was working with Mr. Glasser at one time. Mr. Hamback is still attached to the Chicago office. I believe he is working somewhere in Indiana.

404 Workman never told me during my investigation of him that he received the rent money in cash when he met somebody in a loop building who handed it to him, nor did he tell me he was receiving \$25.00 a week for keeping his mouth shut. When I showed him the Schiavone picture, he refused to identify anybody. I don't believe I had any conversation with Mr. Glasser while I was working up this case. I did have one after the report was written, and up to that time May 21st, 1935, Mr. Glasser had nothing to do with that. After that I had seven interviews with him. Mr. Glasser cooperated with me. I did not like the final disposition of the case but I had nothing I could complain about. During the time I was working with Mr. Glasser and telling him what evidence I thought I had, we cooperated with each other. There was nothing wrong about it, I had done that with other United States Attorneys. This was rather a big case. If the still turned out 10,000 gallons a day the taxes would be close to \$40,000 a day. As far as various lawyers and things like that, court appearances, that is the District Attorney's job. Several agents helped me work on the case. I presume Mr. Glasser was interested in finding the people who built and who were operating the still. I don't know. That is what I was trying to do.

I was not present in court when Ed. Young pleaded guilty. I arrested L. R. Clevenger. He was one of the members of the original incorporation with Workman. He was an incorporator in the Consolidated Warehouse Company. There was some switch in the corporation at one time. He was still a member of the corporation at the time as I recall when the still was erected. I questioned

him and he said he didn't know anything about it. He had nothing to do with the corporation for a time previous to the time they had moved over to Cullerton Avenue. I did not have any evidence to the contrary. Ed. Young, as I recall, was a book-keeper. I believe he was also a member of the corporation. He pleaded guilty and got probation.

405 B. H. Stevenson was also a member of the corporation, I talked to him. He was arrested at the time of the raid, as I recall service for the electric wiring and things was in his name. None of these people that we questioned with the exception of Workman seemed to have any great deal of knowledge with what was going on there. At least, they denied any great knowledge of what was going on at the time. I couldn't develop any evidence to the contrary, I tried my best.

I never saw George Mathews in my life. I have a pretty good idea who he is. I have no proof of it. I think he is Louis Schiavone. I think he is the same man. I have the handwriting. I do not have any of Schiavone's handwriting. I showed his picture to everybody we questioned that had contact with this man, including the people at the bank, and the different people who had any possibility of seeing him, and I could get no identification of him. I tried to get the correct and true identity of Mathews. We knew it was an alias, assumed name. We had nothing to arrest Schiavone for. I did not look for him, not at that time. I did not even want him without evidence, and I had no evidence against him.

Examination by the Court.

I checked Mathews bank account. He had one. They gave us a description but would not identify any of the pictures we showed them.

Cross-Examination by Mr. Stewart (Continued).

I would say setting up a still of the size we found out there would take around thirty days. It would take some making of noise and moving and using machinery. A still of that size after it started throws off an odor. That is detectible for some little distance from the still, I couldn't tell you how far. A still like that being high in

the air, would throw an odor pretty far away from the building, but you could probably walk close to it and not smell it as plain as you could a block or two away, on account of the height, and the time it would take 406 the odor to reach down to the street. We could smell the still when we got into the building the night of the raid. The supplies are quite bulky to supply a 10,000 gallon capacity still, and requires carloads.

I was not present when this Yarrío, they call Sheenie Alberts was confronted by some witnesses in Mr. Glasser's office. I don't know about that. That is the first time I have ever heard that.

Examination by the Court.

From my investigation I learned there were other businesses being carried on in that business. There was some legitimate storage business on the first two floors. It might have been the first three floors. I remember among others was the Walgreen account.

Cross-Examination by Mr. Stewart (Continued).

I have known Horton, one of the defendants, have seen him around the building, and know he is a professional bondsman.

I know the defendant Kaplan.

I have known of Mr. Roth for some time. Those people are not connected with that still. I did not take any money from anybody to protect anybody that might be indicted, or was indicted in connection with that still. I don't know anybody that did.

Redirect Examination by Mr. Ward.

I never had a conversation with Mr. Glasser in his office where he asked me a series of questions about this, like Mr. Stewart has now, from the stand. I am familiar with all the names in that indictment. It is true that I was the only witness that appeared before the Grand Jury that returned that indictment. Glasser was the only District Attorney that was present there at the time it was being presented. I talked to a man named Nieman in that case. I showed him Yarrío's picture, and he identified it.

407

Recross Examination by Mr. Stewart.

If that is true, I never heard until this minute that when Nieman came down and saw the man in person, he failed to identify him. When I was working with Mr. Glasser, he had a copy of my report, I don't know what he needed to ask me.

(Witness excused.)

WILLIAM FREEDMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is William Freedman. I live at 1207 Leland Avenue, Chicago. My business is, and for the past few years, has been writing bonds and supplying sureties in this building. In 1935 I recall, supplying a bond for a man named William Workman. I don't remember what the bond was now, but I know I was paid a fee. The man on Exhibit #19 paid for executing the bond.

Cross-Examination by Mr. Stewart.

I know him by the name of Schiavone. I talked to Workman in regard to indemnifying—I think that same day I was asked to make the bond for Workman. I was asked to make this bond on the corner of Van Buren and Clark, in Chicago. I was told to come over there. A man came to this building and asked me to come over to see this man. I had known Schiavone about fifteen years. I got the money to pay the premium for all the four bonds. That was Workman, Young, Tony Williams and a man by the name of Phelps, or Phillips, I don't remember offhand. I saw Workman once or twice after I took him out on bond. I saw him when he came in the building. I don't remember if I furnished an indictment bond. I don't know if Workman knew who gave me the money. Workman never asked me anything about that. As far as I know, Workman didn't know where the money came from. I never saw Workman and Schiavone in company with each other.

408 The first time anyone connected with the Government asked me who paid the premium on the Workman bond, was today. It was Mr. Markheim. Before that time nobody asked me. During the month or during the year that happened, people connected with the Government asked me who paid the premium. I have been asked a dozen times in the last few years. Schiavone paid me, I guess, \$70,000. or \$80,000. for bonds, for people charged not only with offenses against the liquor laws, state bonds that I made. I made bonds out of town for the man. I know the man quite well. I don't know if I told anybody connected with the Government that Schiavone paid the premium on the Workman bond. Markheim knew, he was with me, he is the representative of the surety company.

(Witness excused.)

VICTOR J. DOWD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Victor J. Dowd, my address is Chicago, Illinois. I am a special investigator of the Alcohol Tax Unit, and as such have had occasion in the last few years to investigate violations of the alcohol tax laws. My investigations have taken me in and out of the City of Chicago. I have had occasion to appear in court and testify and give evidence as the result of my investigations in cases in the last few years. I recall having investigated a case where a man was afterwards indicted, by the name of Leo Vitale, who lived in Peru, Illinois, in La Salle county, in the Northern District of Illinois. I had occasion to follow Leo Vitale during 1935 and observe him participate in an alcohol tax violation. In the case of Leo Vitale and others, I have made an investigation involving this defendant, and approximately 26 distilleries operated in the central district of Illinois. I know he was indicted in the other district. I do not know whether he was indicted in this district.

409 I was a witness in the district court here in a case that Leo Vitale was involved, that case was United States *vs.* one Chrysler Sedan, before Judge Barnes, on

December 23, 1938. It was a libel action. In that particular case, the Government was contending that this Chrysler Sedan was used in connection with a liquor tax violation. It was seized on the premises of a distillery.

Mr. Stewart: Judge, we would like to make our record. This is not in the bill of particulars.

Mr. Ward: Oh, yes.

Mr. Stewart: It is?

Mr. Ward: Oh, sure.

Mr. Stewart: I didn't remember any libel case. Anyhow, I make the objection on that ground and also on the ground of the opening statement. There is no indication it was part of the conspiracy.

Mr. Ward: Oh, yes. I told the jury that.

The Court: Objection overruled.

Mr. Stewart: Subject to the rest of the evidence, I suppose?

The Court: No, flatly overruled.

The automobile was seized by the Government at Leo Vitale's home, Peru, Illinois. There was a garage connected with the house, the garage was 2½ feet from the house. I observed this place before the seizure of the automobile. This car was used to haul the sugar from a warehouse to the building, where the distillery was. It was also used for hauling his associates, bootleggers, around to different parts of the country. It was also used in trailing carloads of alcohol from La Salle county down into Springfield, Ill.

I know the defendant Glasser. He was representing the Government before Judge Barnes in the case of *United States vs. one Chrysler Sedan*. I was in court when the case was being tried. I know of the defendant Alfred Roth, I don't know him. I saw him in court at that time.

I knew previous to my court appearance before Judge 410 Barnes, that Leo Vitale had been convicted for an alcohol tax violation, and sentenced by Judge Wilkerson, to one hour in the custody of the Marshal. There were other defendants in that case, not on trial that day. I had a conversation with Glasser in the courtroom when this libel suit was about to be tried.

The Witness: He (Roth), was telling what a man, what a gentleman Mr. Vitale was, about the car, one thing and another.

The Court: State—

Mr. Stewart: We object to that. Let him tell what was said.

Mr. Ward: Q. Did you make a memorandum of the conversation that was said, that was held that day?

A. What the attorney said?

Q. Yes?

A. No, I did not, only what he said to me.

Q. Well now, what did Glasser say and what did Roth say, when they were up there before the Judge trying that case, or about to try it?

A. I don't remember Mr. Glasser saying anything outside of that was right.

Q. What did he say? Did he remain silent or did Roth do all the talking? Tell us what occurred.

A. He remained silent.

Q. What did Roth say?

A. I don't know what all he said. I couldn't say. In substance it was—

Mr. Stewart: We object to that.

The Witness: This Vitale was—

The Court: Q. Give us your best collection of what he said?

A. Well, he said that Vitale was O. K. That this car was not used in the manufacture of alcohol, and that it did not belong to him; that it belonged to his wife; and that Vitale never used it. And when he did that I got up and I told Mr. Glasser to put me on the stand and I would show him. He said "Sit down". So Roth continued on with his testimony and I got again and I went to Mr. Glasser. I said, "Mr. Glasser, this guy is not even telling how he was convicted. Put me on there. I will show him what kind of a man this fellow is." He said, "Get the hell out of here."

Q. Did you?

A. I did.

Q. Do you know what happened to the car?

A. Yes.

Q. What?

A. I couldn't take the stand. I was not a witness. He did not want me as a witness. So I left.

Q. Do you know what happened to the automobile?

A. Well, returned back to him.

The Court: Turned back to who?

A. Leo Vitale.

Mr. Ward: Q. Now, did you have a conversation with Glasser after that about the Vitales?

A. I did.

Q. When and where did that conversation take place and who was present?

A. Well, I don't think there was anyone present at that time.

Q. When did it take place?

A. In his office, here in this building.

Q. When; that is the place. When?

A. Oh, it was after this, after this car was turned back. I had been down in—

Q. Do you recall that date being December 23rd, 1938?

A. Yes.

Q. All this conversation you are going to tell us about was held after that?

A. I was down—this conversation also took place in his office, at which time I had been down in La Salle 412 County. I had talked to some of my witnesses and Vitale had returned and also had talked to some of my witnesses.

Q. Not what you said to those people.

A. No.

Q. I do not want you to state that.

A. No.

Q. After you had that conversation with these people down there, did you return to talk to Glasser?

A. I did.

Q. Now, what did you say to Glasser, and what did he say to you?

A. I said to Glasser, I said, "That fellow Leo Vitale is down there bragging he got out of this for nine hundred dollars", and I said, "I got a number of witnesses which he has talked to," I said, "Let us bring him in and see who got those nine hundred dollars." He said he would.

Q. Did he ever do it?

A. No.

Q. Did he ever talk to you about that afterwards?

A. He did not.

Cross-Examination by Mr. Stewart.

Q. Mr. Yellowley is your superior, isn't he? Mr. Yellowley is your superior?

A. I don't get you.

- Q. You do not hear very well, do you?
A. Well, I hear very well. I don't get your question.
Q. Mr. Yellowley is your superior, isn't he?
A. I got it from what? I don't get you.
Mr. Stewart: That is all.
The Court: Just a minute.
Q. Do you know Mr. Yellowley?
A. Yes, sir.
Q. Do you work under him?
A. I do.
413 Q. And you did at the time you testified to?
A. Yes, sir. I never talked to Mr. Yellowley about this.

Redirect Examination by Mr. Ward.

I was sitting in the jury box of Judge Barnes courtroom, it faces south, and the Judge's bench is in close proximity to it. Mr. Glasser was standing just at the end of the table. The Roth and Glasser I spoke about are the two defendants in this case.

Recross Examination by Mr. Poust.

I did not see Mr. Roth in connection with this case more than once. I just saw him at the trial before Judge Barnes. Leo Vitale was given one hour in the custody of the Marshal in this district, and given a year and a day in the penitentiary in the southern district of Illinois, in which he was involved in fourteen stills. The only case in this district for which he was indicted was the libel case. There were three or four more cases in this district that has not been presented. On the case for which he was indicted he got one hour in the custody of the Marshal, by Judge Wilkerson, that was prior to the day that I spoke about before Judge Barnes. I was in on the seizure of the car. My assistant seized it. I wrote a report on that case. Rose Vitale, the wife of this man, was the claimant of the ownership of the car, and before Judge Barnes there was present a certified copy of the Secretary of State record, showing she was the owner and licensee of that car. I don't know if my report of this case was read to Judge Barnes. I don't know. Mr. Glasser did not read my report to Judge Barnes on that day when the case was tried before Judge Barnes.

Q. And after he finished reading the report to Judge Barnes, Mr. Roth, the attorney for Mrs. Vitale, the claimant and owner of the car, said to Judge Barnes, "Well, that report does not make a case, your Honor, and I will submit Mrs. Vitale's claim to the car on that report." And that was the way the case was tried and Judge Barnes held that it wasn't any libel for the Government, and awarded the car to Mrs. Vitale. Isn't that what happened there?

Mr. Ward: Just a minute, now. Is that a question?

Mr. Poust: I am asking him if that did not happen.

Mr. Ward: All right.

The Witness: It did not.

Mr. Poust: Q. What did happen there?

A. I never seen no report read nor I never heard of any read, and my report was not read.

Q. You were present in court?

A. I was.

Q. Then, what did happen? What did the District Attorney say to Judge Barnes, that morning?

A. He said this case represents the Chrysler sedan in which the Government seized, at 122 Eleventh Street, Peru, Ill.

Q. What else did he say?

A. Then, Mr. Roth done the rest of the talking.

Q. Have you now told everything that either attorney said there?

A. Well, all that I can remember.

Q. Well, then, you would not say but what there was a lot more information given to Judge Barnes by either the District Attorney or by Mr. Roth?

(No response.)

Q. You would not say that they did not give the Court some more information?

A. I would say that couldn't be very much more, that what I just said.

Q. What you remember?

A. What I remember.

Q. Did you tell the court also, can you tell the court and jury anything else that those lawyers told Judge Barnes?

A. No, I couldn't.

Q. All right. Can you tell this court and jury anything that Judge Barnes asked about the case on that day?

415 A. The only thing I think Judge Barnes asked was there anything in the car?

Q. What was the reply?

A. Mr. Glasser said, "Nothing at all."

Q. What did Mr. Roth say, if you remember?

A. He said that Vitale never used the car; that it belongs to his wife, and the wife used it as a pleasure—

The Court: Let him finish the question.

The Witness: The wife used it as a pleasure car.

Mr. Poust: Q. Anything else?

A. There was another Ford there, that that belonged to Vitale. We did not seize it.

Q. That is what Roth said?

A. I think there was something to that effect.

Q. That was the fact, wasn't it? You had no evidence that this Chrysler of Mrs. Vitale's was used in violation of the liquor law?

A. Yes, I did.

Q. You had?

A. Yes.

Q. Did you have it in the report?

A. It was, yes.

Q. Now, was there anything else said there by either of the attorneys or the Judge?

A. Not that I can recall.

Q. And you say that Judge Barnes asked these attorneys if there was any liquor found in this car and you say that neither one of them answered that question?

A. Yes, Mr. Glasser said, "No, there was nothing found."

Q. Now, have you now told everything that happened before Judge Barnes?

A. I believe so.

Q. Then Judge Barnes entered an order returning the car to Mrs. Vitale?

A. That is right.

416 Mr. Poust: We would like to have the Vitale file, the libel file, Exhibit # 36, admitted in evidence, so that we can refer to it later.

The Court: It may be admitted.

(Witness excused.)

ELMER SWANSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Elmer Swanson. I live at 18 W. 104th St., for twenty years or so. I am married. I know a man named Christ Del Rocco, sometimes known as Patsy. I have known him about seven years. I was engaged in the illicit manufacture of alcohol with Patsy Del Rocco. We commenced business at 128 W. 119th Street. I know Frank Hodorowicz, he has four brothers, one lives on 118th Street, and one lives on 121st and State, I believe, the other two live right close together. I have known them seven or eight years. I did not see them very much, during 1932 and 1933, I don't know what business they were in at that time. I became familiar with their business in 1935 or 1936.

I had an interest in a still at 116 W. 119th Street, I had a half interest, and my brother-in-law, Patsy Del Rocco had the other half. I know a man named Victor Joppek. In the latter part of 1936 and 1937. I know a man named Steve Ostrowski, about the same length of time I knew the Hodorowicz brothers. He lived over on 119th Street, and Michigan Avenue, about three blocks from the still that I had a half interest in.

The Government seized the still at 116 W. 119th Street, and after that I had a talk with Patsy Del Rocco. After that I don't remember if I had a conversation with Steve Ostrowski. I don't think I ever went to Steve Ostrowski's office.

417 I know the defendant Anthony Horton, I believe the first time I met him was at the tavern at 119th Street, in the latter part of 1936, I believe. I recall having a conversation with Horton at that time, it was about taking care of the case. We went to this tavern. We sat down there, we had some beer and he told us that he could take care of the case, take care of it for \$500.00, that is, he told my brother-in-law and I, meaning everything would be taken care of about this still for \$500.00. Before that he says that we would, we were going to be indicted or taken in, or something like that, for being the owners of that

still. I met him in the tavern there on the corner, then we went into the tavern, and he says we were going to be indicted or arrested for being the owners of the still and he said he would take care of it for \$500.00. I had never seen him before. I never was introduced to him, I never had any business with him before, that I remember. The \$500.00 was paid in currency by my brother-in-law, Patsy Del Rocco. Horton and we kidded about it, asked him what he was going to do with all the money. He said he was going to take it down-town and give it to the boss.

Q. Did he mention who the boss was?

A. He did not exactly mention who the boss was. He mentioned something about Red. That is all.

Q. What did he say about Red?

A. Well, I don't remember that. Well, he says that he would not get much of it after that.

Mr. Balaban: I object. That is not responsive.

The Court: Q. Was this after the still had been raided?

A. Yes.

Q. How long after?

A. I would say six or eight weeks, maybe three weeks. I don't recall.

Q. Up to that time had you been arrested?

A. No, sir.

Mr. Ward: Q. Were you ever arrested in connection with that still?

A. No, sir.

Q. Now—

The Court: Was Della Rocco ever arrested?

A. No, sir.

Q. In connection with that still?

A. No, sir.

Mr. Ward: Q. Well now, after he said it was going to go to Red, what did you say?

A. What was that? I don't remember what he actually said—

Q. I don't know whether you are talking or not, Swanson. I can't hear you.

A. I said I can't quite remember what I said.

The Witness: I never have talked to anyone nor did anyone ever talk to me or did I ever hear about the seizure after I paid the \$500.00. Our discussion was that if the case was not taken care of we would go to jail or something. We would be arrested.

I remember we tried to get Horton to cut the price, he says that is the best he could do.

Q. What, if anything, was said about assuring you that it would be taken care of for the \$500.00.

Mr. Balaban: I object. He is assuming that there was something said. I think he has gone too far in leading this witness. I object.

The Court: Objection overruled.

The Witness: He says that if it was not taken care of the money would be refunded.

The money was never refunded.

On December 31st, 1937 I was interested in a still that was seized at 6949 Stony Island Avenue. Chicago, I had a small part interest in it. My best recollection of the capacity of the 119th Street still is 30-5 gallon cans a day. The still was in operation about a year or so, it operated about twice a week, making about 300 gallons a week. 419 I was disposing of the alcohol to different people, and receiving cash for it, the alcohol was around 170 proof.

The capacity of the still at 6949 Stony Island Avenue, I would say was 50 or 60 cans a day, about the same proof, that still ran about a month, and then was seized by the Government. After the still was seized I found out that an officer of the United States Government was looking for me. I found out the same day it was raided. They followed me in the car. When I was letting my brother off, they got out of their car. They pulled up alongside of us and they wanted to know my brother's name, and he told them. He asked me my name. I told him, and they wanted to take me down-town, and we drove away. He didn't have a warrant. I didn't think that he knew who he really wanted. That is the alcohol tax unit man. So I told him to get out of my car, he said O. K. so I stopped the car. As he was going to get out of the car, he made a grab for my keys on the dash-board. I grabbed his hand and I got the keys away from him. I got out of the car and ran. I didn't have anything in the car. The license for that car was in my wife's name, it had been in her name two weeks, as old as the car was. I had a 1937 license plate on it. I surrendered after I escaped. I came in myself after I was able to make bond for myself. I arranged a bond with Mr. Horton. He was a professional bondsman. He made the bond for me. Horton is a defendant in this case.

Glasser was present before the Commissioner when my

bond was made or set. I believe I paid \$100.00 for the bond. I was represented on that occasion by an attorney, Alfred Roth, the defendant in this case. I was sent to him by Kretske, the defendant in this case. I have known Kretske before that, about three or four weeks, maybe five weeks, I don't know exactly. I met Kretske in Hodorowicz's hardware store.

420 I know Peter and Michael Hodorowicz. I have known Michael for six or seven years. I know Anthony Hodorowicz and Walter Hort who is nick-named Cookie. I know a man named Victor Joppek for two years or so. He died in 1936 or 1937. I heard he was in a place where a still exploded when he died. Joppek worked for me in the alcohol business now and then. He worked for us partly in 1936 and partly in 1937, I mean Patsy and myself. I believe Victor Joppek was picked up one time, sometime the latter part of 1936. After he was taken to the United States Attorney's office I had a conversation with him, I think it was in 1936 or the early part of 1937. The still that had exploded that I was interested in, exploded in October 1936. I know a person named Katzen, he was a tenant in the property where the still was housed. I don't know anything about him at all. I don't know how long after the still exploded Joppek was apprehended and taken to the United States Attorney's office.

Q. Would it refresh your recollection if I said it was around February, 1937?

A. Well, it could have been at that time.

Q. Do you know whether or not Joppek visited the District United States Attorney's Office more than once after he was arrested?

A. Well, I believe he was picked up by the police, and he was released that same day, and then later I believe he went back, and then he was released again.

Q. Now, do you recall or do you know, if he returned to the District Attorney's office after he was released?

A. I don't think so. I don't know. I don't think he did go back.

Q. And it was around this particular time that Tony Horton came out to see you, is that right?

A. I believe it was after that.

Q. After that. Do you know whether Joppek was
421 ever arrested charged with having anything to do with that still?

A. Not that I know of.

Frank Hodorowicz operated a hardware store at 11823 South Michigan Avenue, I was in that hardware store at the same time as Norton Kretske, and Horton, the defendants in this case. On this occasion there was a conversation held between the parties present there. It was in the early part of 1938. Mike Hodorowicz, Frank and Tony Hodorowicz, Del Rocco and myself were present. At that time I had been arrested for the still at 69th & Stony Island at released on bail. Kretske participated in the conversation. It was to take care of the case.

Q. Was there anything said other than that?

A. Well, the case was supposed to be taken care of for \$800.00, and nobody was supposed to go to jail.

Q. Was there something said about \$1200.00 at this time?

A. Well, the \$800.00 was supposed to be the first payment, and when everything was all over, why the rest of it was supposed to be paid.

Q. Was there \$500.00 in currency paid to Kretske at that time?

A. I think it was \$500.00, if I am not mistaken.

Q. And the balance was to be \$700.00, is that it?

Mr. Stewart: Well, your Honor, we would like to have the witness's testimony, and not Mr. Ward's. We object.

The Court: If the witness knows,—speak out and tell us what the facts are.

The Witness: A. Well, I think it was \$500.00, and there was a \$700.00 balance, it was \$1200.00 in all.

I think the conversation took place in the morning, around 10 or 11 o'clock. 118th and Michigan Avenue is about 13 or 14 miles from the loop. Horton introduced

Kretske to us, he said this is the man that is going to take care of it, the case was supposed to be taken care of for so much money, it was supposed to be fixed up so nobody goes to jail. Some of us sat on chairs, some stood, and we discussed the case. The whole conversation was to take care of the case, that was all.

I don't remember if he made a statement that we would go to court or not. All I know is it was supposed to be taken care of. I knew Kretske was a lawyer, I didn't take it that he discussed the case with me as a lawyer.

Q. Now, have you exhausted your recollection of the entire conversation?

The Court: In other words, have you told us all you can remember he did?

A. Well, I don't think I can remember anything else.

Mr. Ward: Q. Would it refresh your recollection if I was to tell you that Kretske said "Don't worry about a thing. Everything will be taken care of."

A. Yes, that was said.

Q. And Dan was to get part of the money that was given him?

A. Well, I don't know if he said Dan or Red, or something like that, either one.

Q. Either what?

A. Either one, Red or Dan.

Q. Didn't you know at that time who Kretske was referring to as Red?

A. Yes.

Q. Who?

A. Well, it was Glasser.

After that, Frank, Mike and I believe Tony Hodorowicz, Patsy and myself went to Glasser's office to talk about that case. We went to Kretske's office to make arrangements to get a lawyer to defend us. I guess we were going to be up in front of the Commissioner, and Kretske 423 wanted some more of the money. I don't believe it was stated how much.

At that time, Kretske got a lawyer for us, that was Alfred E. Roth. We went to Roth's office, he did not come to Kretske's office. We did not pay Roth any money. We discussed our case with Roth. We prepared our case to go in front of the Commissioner. We discussed the case. He wanted to know all about the case, what happened and what took place. That was in Roth's office. Before we went to Roth's office, Kretske told us not to worry, that nobody would go to jail, that everything would be taken care of.

Q. Would it refresh your recollection if I was to say to you at that time Kretske said "The heat is on."

A. Yes, that is right.

Q. How did he come to say that? "The heat was on."

A. Well, I suppose he meant it was hot over in the Federal Building, or something.

The Court: What is that?

A. It was hot over in the Federal Building, or something like that.

Mr. Ward: That is not climatically speaking, you don't mean that, do you?

The Court: What did you understand him to mean when he said it was hot, "The heat was on."

A. Well, the heat was on them, I would say.

Q. By that, what do you mean?

A. Well, they were being watched, or something like that.

We discussed with Kretske the possibility of a fine in the case, he said he would pay everything up to \$50.00, and anything over that they would take care of. He said they would or he would take care of the fine above that. There were three of us defendants and we had paid

Kretske \$500.00 at the meeting at the hardware store.

424 I don't remember if I was at the hardware store when Kretske came there or if he was there before I arrived. I knew before I went to the hardware store that Kretske and Horton were going to be there, Frank told me. That was the case of *United States vs. Anthony Hodorowicz, Clem Dowiat, and Claude Swanson*. Afterward I appeared in that case before Judge Woodward. I guess Mr. Glasser was representing the Government. Roth was there. The first time we appeared before Judge Woodward, it was continued. I don't remember who asked for the continuance. These pictures here attached to Exhibit #37 show the still, premises and the still that was found in the premises. I don't know exactly the capacity of the still or how much it would hold, or how much it would produce.

Q. While you were there before Judge Woodward, did Mr. Glasser say to you in the presence of Anthony Hodorowicz or Clem Dowiat or Claude Swanson you are in this indictment with violating certain sections of the Internal Revenue laws, that is on a certain day you had in your possession a certain still unregistered, and that you had in your possession mash and alcohol mash to be used in the manufacture of alcohol upon which the tax was not paid. Language to that effect. Was that ever asked you in the presence of Judge Woodward?

Mr. Stewart: Your Honor, Mr. Ward spent a long time telling this jury what his evidence is. Now if he just asks the witnesses, that is my objection,—he is doing the testifying.

Mr. Ward: No, this is in effect, asking the witness about the arraignment. I am asking if that was said in his

presence, and whether he was arraigned there, he wouldn't know.

The Court: Do you recall the time you were before Judge Woodward?

A. Yes, sir, the four of us came up before Judge Woodward, and I believe our names were called out, and we got up in front of him, and I think the Judge and our attorney Roth and Glasser were talking about the charge, 425 and then if I remember right, Roth said the case will be continued until a certain day. And then after that we came back that day, and the case had been continued. Then I never heard any more about the case.

The Court: Did you pay a fine, or anything of that kind?

A. No, we didn't pay a fine.

Q. The case just dropped out of mid-air?

A. Well, it dropped out.

Q. When was that? How long ago was that?

A. Well, that was the early part of 1938.

Subsequent to that time I was never indicted by any Federal Grand Jury in the Northern District of Illinois.

Cross-Examination by Mr. Stewart.

The still I was indicted on and went in before Judge Woodward on used to be an old stable for a dairy at 69th & Stony Island.

Mr. Ward: Pardon me, I have forgotten to ask you a few questions—

Direct Examination by Mr. Ward (resumed).

I am under indictment in Cleveland. I went over this case with you, and you told me to tell what I know, and what I am stating here to this jury is what I told you on many occasions.

Cross-Examination by Mr. Stewart (resumed).

The still that was in the stable made about 50 cans a day. I did not rent the place where the still was being used personally. I did not personally tend the still. I was not about the place at the time the still was being operated. I was a partner. As far as the arrangement of renting the place and dealing with the people on whose

premises the still was and the people around there, I was under-cover, as far as they were concerned. The still had been operating a month before it was raided by the United States Government. And during that month 426 I kept myself under cover as far as the still was concerned. I purposely did that for self-preservation. I did not want to go over there and be caught tending the still. I hired other people to do that. That in this particular still the fellow that did the actual tending of the still, was this Joppek I have been speaking about. He was not arrested at the time the raid was made. I don't think anybody was arrested in and about the still at the time the raid was made. Tony Hodorowicz and Clem Dowiat were arrested outside, they were some little distance from the still at that time. They called me Swede. Joppek was not later arrested in connection with that still that I know of. I don't think the Government knew at the time of the raid who actually tended the still. It is easy to find out who owned the premises. I don't know because I never dealt with that person.

Q. And if the Government took that person in, that person could never give any evidence against you of first-hand knowledge, could they?

Mr. Ward: I object to that, if your Honor please.

The Court: What that person could do, or what the person couldn't do,—objection sustained. He had nothing to do with that.

Mr. Stewart: That is what I want to show. I want to show it by steps. May I tell the Court, because there will be a lot more of this, if I may—I mean without the witness hearing. I don't want the witness to particularly—

The Court: Go ahead and cross-examine.

The Witness: When I jumped out of the car, I was seven or eight miles away from the still, and I knew of course from what had been said that I was suspected of having had something to do with operating the still. I surrendered myself right down here. The Federal Agents did not take me over to the new Post-Office building. 427 I came here because I knew that I was able to go right out on bond and the reason I had made the arrangements in advance was that would save me the inconvenience of being held in custody, and questioned. I didn't want to be asked any questions about the operation of that still by the Federal Agents, and if they had asked me

I would have denied any connection with it. I thought they didn't have any proof that I had any connection with it, and I was pretty sure that they didn't, because I had been quite successful in keeping myself out of sight as far as the actual operation of the still was concerned.

Frank Hodorowicz was in that still, Clem Dowiat was a worker but they never caught him there, they caught him some little distance away from the still at the time they caught Tony.

I don't think Mr. Kretske at the time of my contact with him at the hardware store was an assistant District Attorney. Roth was supposed to represent us before the Commissioner. I didn't know what a hearing was. I never was in front of a Commissioner or in any court before. Roth talked to me about what it was. He said we would go in front of the Commissioner first, and I could tell from the conversation with Mr. Roth that he was preparing for a hearing, before the Commissioner. Mr. Roth indicated it was possible the case was such that I might be discharged at the hearing, and he said he would do his best. Mr. Roth asked me questions along the lines you asked me, to try and find out what the Government might ask concerning me, because he was interested in trying to find out from me what they could prove against me, and I told him in a general talk, the same thing I have told you, that they didn't have anything as far as I knew. That is right. So when I went over there I was prepared in case I was called as a witness in my own behalf before the Commissioner, to deny I had any connection with that still. I believe I would have done that under oath in order to get out.

428 So when we got there we found Mr. Glasser representing the Government. I don't think I had known Mr. Glasser before that. I had seen him before that when he was engaged in his work as prosecutor in the Federal Building. I was just listening to some cases involving alcohol. I would not care to say whether the cases involved my friends or not. It was maybe a couple of years ago, or a year ago. It maybe was a year before I was taken before the Commissioner that I saw Glasser in court. I was interested in the still business a little bit and came down to see how they do it. When we got before the Commissioner on the morning that Mr. Roth went over with me as my lawyer, Roth and Glasser went into the Com-

missioner's chamber and they were arguing in there, or were talking loud, I don't know if they were arguing, we couldn't hear what they were talking about, and when Roth came out he told us it is all over for today. As far as I could observe it was a contest between the Government's lawyer and Mr. Roth as to whether we were going to trial that day, and Roth expressed some little displeasure that it was continued, and explained to us he would rather have the hearing, because he thought the Government didn't have anything to hold us and we could have won our case before the Commissioner, and he thought it was a kind of a bad deal, they continued it, because while they were continuing it they might take it before the Grand Jury, and in that way we would be deprived of a chance before the Commissioner, and that is what happened. So when the case came up again before the Commissioner, the Government was again represented by Glasser, and it was dismissed because we had been indicted. That didn't look like a fix to me, it looked like I was getting the worst of that.

When we went before Judge Woodward, I understood a plea of not guilty was entered on my behalf, and we, the other two defendants and myself, prepared for trial 429 with Mr. Roth. And we discussed a little more thoroughly the question of what the Government had in the way of evidence against Anthony, Dowiat and myself. At the time of that discussion, Roth took a pencil and paper and we assisted him so he could get a full understanding of it, and we drew a diagram.

Exhibit #38 looks like the sketch Roth made when we were preparing for trial. That square indicates where the still was housed. I don't know if the diagram indicates the place where Tony was arrested, but I think that is where he was. We were all doing it together. Tony was indicating where he was, and I told Mr. Roth at that conference how they tried to arrest me some distance away, and I got away, about all of that, and I was going to testify before Judge Woodward that I had nothing to do with the still, that was just for self-preservation, so I could win my case. The fact that it was under oath and was perjury was not secondary. I would rather commit a little perjury than go to the penitentiary.

At that conference when we were preparing for trial, Tony indicated what he was going to say when we went

to trial, that some Federal Agents dressed in working clothes just jumped on him, that he didn't know who they were, that he came them a resistance until one of them pulled a pistol and threatened to shoot them. And Tony was going to come over to testify at his trial before Judge Woodward that he was in that neighborhood just looking for a used car, and that he had nothing to do with that still, and Clem was going to come over and testify in his own behalf as a witness, he was along with Tony when he was looking for a car, and had nothing to do with the still. So we were all sitting down together in Mr. Roth's office arranging for our defense in the manner I have indicated. We came over to court and instead of the case going to trial, Roth told us it was continued. I don't know what happened to it. It never came up. That is all.

430 I understood from Mr. Roth when it was continued that a certain other day was set, and I expected to have to come back on that other day to come to trial, and on that day we came down here again and we went over to Roth's office and talked it over again, to make sure we were all ready for our defense. Mr. Roth asked us to come over. We were willing to go ahead with this plan, we had to defend ourselves, and when we got to court, we found the court doing business but our names were not called, and we sat waiting for them to be called, so did Mr. Roth, and then it was a surprise to us when they finished the call, and our names were not called, and Mr. Roth then went down to look in the Clerk's office to see what happened. Then he said something about being stricken off with leave to reinstate, and he said the Government did that without letting him know, and of course we didn't know about it before Roth told it there, because if we had, we wouldn't have gone to all this trouble to get ready for trial. Well, I suppose the case could be reinstated.

The first time that I told anybody connected with the Government that I was guilty in that case was three or four months back, I would say five months maybe. I think Mr. Bailey was the first one I told it to, down at the post-office. Then we went over to the Department of Justice in the Banker's Building, when I say we, I mean Frank Hodorowicz, Del Rocco and myself, and we were all questioned for the first time in the presence of each other, we were talking about the case, and we had a lawyer there, Ralph Vince, we were not arrested and taken to the Federal Building. Mr. Bailey came out to see me at my home,

it was a little while afterward that we were taken to the Federal Building. He came out to see us and then we went to the Federal Building. When Mr. Bailey came out to see me at my home, I talked alone with him.

431 Bailey did not have anybody with him. It was about four months ago, or five months ago. He did not talk to me in my home, it was over in the restaurant, 95th & Michigan. I worked over there. I am talking about the Streamline Cafe, that is not my place of business, I have no interest in it. I tend bar there, I saw Mr. Bailey in the Federal Building before that. When we were in front of the commissioner, in the original case involving this still, in the case that is on this diagram Exhibit #38. The next time I saw him was about four months ago at the saloon where I was tending bar. He knew me and I knew him. We talked for a half an hour or so.

I have another case coming up in another district, where I am charged with a violation concerning the Federal Alcohol Law, in Cleveland. The way that stands is I gave a bond here to go back there. Tony put that bond up for me, I guess it was February 9, 1939. I made a mistake before when I said Tony put up a bond for me for this place on 69th Street. The Tony I mean is Tony Horton. Tony put up the bond for me in Cleveland, my mother and father put up the bond on the 69th St. still. I did not know when Mr. Bailey came out to the saloon where I was working, that the Government Agents have it in their power to send me back to Cleveland, while I am out on bond. The way I was under the impression, I was indicted and the bond was put up for me so I didn't have to stay in jail, and when my case is called I have to go to Cleveland, and appear, but I didn't think Mr. Bailey could send me back any time he wanted to.

Q. Well, he could get that case called, or have something to do with it?

Mr. Ward: I object to that.

The Court: Sustain. That is entirely out of order,

Mr. Bailey is not running the courts down in Cleveland.

432 I didn't admit anything to Mr. Bailey when he came to my saloon and talked to me about a half an hour. I denied I had anything to do with the still. He did not mention this Joppek who had been killed. He never said anything about picking up that body. None of the agents have. I didn't give him any information during the half hour he talked to me. He asked me if I was a partner in

this still on Stony Island Avenue, and I told him I was not. I lied to him. He saw me again before I went down to the Federal Building. I imagine once or twice. I only lied to him once. He just dropped in to see me, that was all. Later on I told him the truth, so far as being a partner in that Stony Island still. It was about the third time he was over there, or the second.

Q. Could you tell the court and jury what it was that persuaded you to change your mind to quit lying to him?

A. Well, I was not all alone, I told Bailey, I said if the boys go with you, I will go with you. If they don't go with you, I won't go with you. I said to him, I am not going to be holding the bag alone.

By the boys, I mean Tony Hodorowicz and Clem Dowiat. I didn't know anything about Bailey seeing them. I didn't know what Bailey was doing. I think somebody else in the crowd told them first before I decided to tell them I was a partner in the still. The Government Agent didn't tell me anything. I don't know who the first one was that told the Government, I didn't ask any of them. By the time I went down to the Federal Building though, I had already told Mr. Bailey somewhere away from the Federal Building, I was a partner in this still. I was all alone when I told him that. It was over in the restaurant and tavern. Then we went down to the Federal Building and found that the others were also telling about how they had a part 433 in it. We weren't all together. I guess one by one that was told. There were three of us down there when I was down there, and we were questioned separately, and signed a paper in the presence of my lawyer, that is the only time I have ever been over there, in the Federal Building. Now the Government has my written confession, I was a partner in the Stony Island still, they have had it about four months, and they have not reinstated my case. If they do, they have my confession under oath, freely and voluntarily given, and on that they could send me to the penitentiary.

Q. You know that, don't you?

A. Yes, sir, but I expect a little leniency too.

Q. Yes, for what you are trying to do for them here today.

A. No, not necessarily.

Q. Well, what else are you doing for the Government, beside this?

A. Well, I am looking out for myself too.

Q. Of course you are. And you think it is of best interest for you to come here and give this testimony, that is better than going to the penitentiary, isn't that right?

A. Well, I don't expect to not go to the penitentiary, I expect leniency, that is all. I am just telling the truth. That is all.

Q. When are you telling the truth?

A. Right now.

The Witness: The first still I mentioned is at 119th Street. I kept myself very successfully under-cover there too, because I was never indicted for that. There was a fire or something out there, I believe it was in 1936. The still had been operating a couple of years before the first broke out and I was selling the alcohol. I don't know
434 how much alcohol costs to manufacture. I haven't done it for a long time. I don't remember what the sugar cost. I don't care to answer that question. I made a living with those stills, and I don't care to tell whom my customers were either. I didn't tell Mr. Ward who they were, he didn't ask me. I don't remember whether he was interested in that. I think the fire department was called to the premises where the still was, and that's how it was discovered. I never paid any money to any Federal Agents. I don't know the name of the working man in whose home the still was. After the fire broke out and the matter became known that the still was there, I saw Tony Horton out in the saloon on the south side.

Q. How long after?

A. Well, it was about a month or so after. Right after Joppek was picked up.

Q. Pardon me?

A. Right after Joppek was picked up.

Q. And Joppek was the man who had attended that still over there for you?

A. Yes, sir.

Q. You knew he had been picked up, and then released, didn't you?

A. Yes.

Q. And you knew he had not given any information about you, didn't you?

A. I don't know. I don't think so.

Q. Well, you are pretty sure he didn't, aren't you?

A. I don't think so.

Q. At least you knew he was not going to testify against you, you knew that, didn't you?

A. No. I didn't think he would.

435 Q. You didn't think he would?

A. No.

The Witness: So when Tony was talking to me as far as I knew there was no warrant out for me. Tony Horton told me there was going to be one. I know now as a matter of fact there never was a warrant issued for me in that case and I know the Government has no evidence against me outside of my own admission in that case. As far as I know, I saw Tony Horton put the money in his pocket and kept it there, but I didn't see him give it to anybody. He said he was going to give it to somebody, that is all I know about it. I have had people tell me lies before. I was willing to pay the money in the hope that that would keep me from being charged with having anything to do with the operation of that still. Sure, I was willing to fix that, I didn't know of any evidence at all they had against me outside of what he told me. He told me they were going to get a warrant out for me, and he said they could take care of it. That is not telling me they had evidence. I didn't tell Tony the Government didn't have any evidence against me, because I had left myself under cover. I was making a living in those days and this \$500.00 wasn't all paid by me, my partners helped with that, and my end was half of it. I wouldn't pay money to be rid of the trouble of defending myself where they didn't have any evidence against me. I wouldn't fix a case where I was innocent rather than be bothered with it, why should I do that? Why should I lay out money for nothing. I was under the impression that they might possibly dig up some evidence against me, but they never did. Now at the time Tony was talking to me out in the saloon, the only contact I ever had with Mr. Glasser, was just when I was a spectator. I never had no dealings with him, or anything like that. I don't know anything about him, outside being a prosecuting attorney.

436 I knew enough about the alcohol business to know that as a general rule, prosecutions originate with the agents, and then they bring it over to the prosecutor, but if the agents don't bring you over here, there is no case. I have mentioned all the stills on cross-examination that were referred to by Mr. Ward, if you ask if I had any partnership in any other stills, I would refuse to answer you.

When we were in Mr. Ward's office the other day,

Hodorowicz, Dowiat, Rocco and myself, Mr. Ward didn't say a thing about rehearsing for a grand opera. I don't remember him saying, "get out of here". I don't think he said that. I don't think he used the expression "Grand Opera". I would tell on him if he did. I think it would be alright for me to tell on Mr. Ward, in my position here.

Mr. Kretske was out of the District Attorney's office at the time when we were talking about the case over in the hardware store, I had never seen Mr. Kretske before that time he was over at the hardware store, that I talked about in my direct examination, and at that conference at the hardware store, among all the fellows we have mentioned, we were willing to pay money in order to corrupt somebody to fix the case. To clear the case, yes. That is what we were looking for a chance to do. We wouldn't fix the case not exactly with anybody, but he would have to make some showing of being able to do it.

Redirect Examination by Mr. Ward.

I don't know what evidence the government had in it's possession against me. I don't know now, and I didn't when we paid the \$500.00 to Horton, and we were paying that to fix the case if the Government had a case.

437 The Court: What had you known about Horton that you testified you were paying this money to somebody who might possibly help you?

A. Well, I had heard he had taken care of other cases, and he could take care of mine, or ours.

Redirect Examination by Mr. Ward (Resumed).

I went to the Federal Bureau of Investigation, I know Mr. Devereux, the special agent of that bureau, he talked to me, I gave him a statement, Mr. Bailey was there, Mr. Deveraux questioned me, and I answered the questions he asked. I don't know if anybody from the United States Attorney's office was present at that time in the Banker's Building.

Mr. Stewart: Your Honor, I move to strike his answer to your Honor's question. I am not even sure the jury heard it, but—

The Court: Motion denied and exception.

Recross Examination by Mr. Stewart (Resumed).

Mr. Bailey is the only agent that questioned me. Mr. Ward has questioned me. They didn't ask me what income I made off of my illegal business. I don't know, I made a living, that is all. Well, I don't know exactly how much money I made.

(Witness excused.)

CHRIST DELROCCO, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Christ Del Rocco, I live at 12140 Yale Avenue, Chicago, going on to five years. I know Mr. Swanson, the witness that has just left the stand. He is my brother-in-law through marriage, we married two sisters. I 438 know him the last five years, since he became my brother-in-law. I know Frank Hodorowicz, for the last nine years. I live east of Michigan Avenue, on 120th, and live there for about three years, then moved away on the far west side, 117th Street, 400 west, that is known as Roseland. I know all the Hodorowicz boys. I know Clem Dowiat. I know Tony Horton, the defendant in this case. I know Norton Kretske for the past two years. I have been connected with the operation of a still, not registered, which produced alcohol, upon which the taxes were not paid. I was in that business before I met Swanson, a very short time, I operated right over in Roseland. I have not manufactured, sold and delivered untax paid spirits for the last two years. Before then, I did. I was interested in a still at 119th Street, Chicago, Illinois. I owned half and my brother-in-law Swanson the other half of the still. The 119th Street still was seized in November, 1936. After it was seized, I had a conversation with a man named Steve Ostrowski, at my home. I talked to Elmer Swanson after I had a conversation with Ostrowski. It was either in my house we talked about the matter, or in his house. After I talked to Elmer Swanson, I had occasion to return to Steve Ostrowski's. I had no further conversation with Ostrowski at that particular time. After

I talked to Ostrowski and to Elmer Swanson, I met Tony Horton at 119th and Michigan. I was called and told that Horton was up at the corner. I received a telephone call from Steve, and after I talked to Steve on the phone I went to the corner, and found Tony Horton there. I went into some place and talked to him. My brother-in-law Elmer and Tony were in a tavern between Michigan and State Street, and went into a booth. The law was going to get me if I didn't do so, and a man by the name of

Horton could fix things up, and I could have him, and 439 so came out and met him and went to the tavern.

I asked Mr. Horton about what would it cost, and he said \$500.00. I said the man is crazy. Well, to make the whole thing short, we tried to connive, and told him we didn't have that kind of money. He said that is all it would take, \$500.00 would clean up the whole thing. We were talking about the still on 119th Street, \$500.00 and that nobody would go to jail, that I know definitely.

The Court: Did he tell you how he would use this \$500.00?

A. That he had to give it to the boss.

Q. Did he tell you who the boss was?

A. He said the red-head, that he would only get a couple of dollars out of it, for his end, for coming out there, very little.

Direct Examination by Mr. Ward (Resumed).

After Horton was paid the \$500.00 by me, we talked about it. It was an easy way to make a living, to just run out to a man that was backed up against the wall, and demand that kind of money, and not to worry about it. That is all there is to it. Horton had heard we were in trouble, he told us, up in the court-room, in the Federal Building. They were going to get a sub-poena and pick us up, if we didn't do something about it. After we paid him the money, he said the case would be taken care of for sure, and we didn't have to worry. That is his language, we remained with Horton four or five minutes, we had beer right in between while we talked about it. Horton paid the bill for the beer and the sandwiches we had. Previous to that time I didn't know Horton. I talked to Frank Hodorowicz several times after that about meeting Horton in the tavern. I was never arrested in connection with

440 the distillery that I paid Horton the \$500.00 to take care of. I know the defendant Kretske since 1937 or early in 1938. I was interested in the still seized at 6949 Stony Island Avenue. There were other persons than myself interested in that still, Elmer Swanson and the Hodorowicz Brothers, all of the Hodorowicz Brothers. I was present in Frank Hodorowicz's hardware store when Mr. Kretske came there early in 1938, a week or ten days after the Stony Island seizure. We had a meeting that this man was coming out there to give us the lay-out, Frank told me about it the day before, it was to be in the afternoon. Frank, Mike, Tony, Elmer, Horton and Kretske and myself were there. We talked about the case on 79th Street. Kretske told us that \$1200.00 would take care of everything, there were different questions asked of him back and forth.

Q. Was anything said there about not being brought to trial?

Mr. Stewart: Wouldn't it be a good idea, your Honor, to have the witness tell us instead of Mr. Ward.

The Witness: For the \$1200.00 we expected nobody would go to jail, no fine. Mr. Kretske said no one would go to jail. He said if it was \$50.00 we would pay it, and over that they would take care of it.

There was no money paid to Kretske at that time at the store. There was nothing paid at the store. I would say \$500.00 was paid to Kretske in the presence of the same group, three or four weeks after that, in Mr. Kretske's office, the balance of \$700.00 was to be paid to Kretske after the case was over. Kretske told us the town was red-hot and he wanted more money, we told him there was no more. I thought he meant the town was full of Federal Agents. I was there personally when the money was paid to Mr. Kretske. He put it in his pocket, we waited there for the Swede and Clem Dowiat. They were sent over
441 to another lawyer, and we waited for them. I never went to Kretske's office after that. I went there that one time only with Frank Hodorowicz. Mr. Kretske's office was in the Tribune Building on Dearborn Street.

Q. Do you recall anything else that was said there at that time?

A. Of our own trouble, or the 79th Street trouble?

Q. Was anything said about what Kretske was going to do with this money?

A. Yes, he would get the money and take care of

another lawyer. He was going to represent Elmer and Tony Hodorowicz.

Q. Was anything said about what he was going to do with the money, other than that?

A. Split it up.

Q. With whom?

A. Well, he had to take care of somebody, that was none of our business, that was his.

Q. When Mr. Kretske told you the heat was on, did he say the heat was on the red-head? and he guessed it was hard for it to be carried out?

Mr. Stewart: I object, Your Honor, that is unfair.

The Court: It is leading. Objection sustained.

Mr. Ward: Q. Do you recall anything else that was said?

A. The heat was on the red-head.

Q. Are you sure he said that?

The Witness: At that time I didn't know Mr. Glasser.

Q. Did you know who he meant?

A. (Answer inaudible.)

The Witness: I first met Mr. Deveraux last year, he came out to the south side, we had been up to his office, across the river. Mr. Bailey was there.

The first still I talked about was out at 119th street I have never been indicted. The only thing I have over my head is an indictment in Cleveland. I was a partner in that still at 119th street. I would say it operated close to 18 or 19 months. We were selling the alcohol. The name of the person who had his home there was John Piretta. I had known him about 10 years. He didn't have a place to sleep, so I furnished him a home on the condition that he would allow the still to be in it. He knew that Swede was my partner. I didn't ask him, Piretta, to tend the still. He had nothing to do with that. He had a job working somewhere nights. He lived there with his wife. I wanted to help him out in case he was arrested and charged with knowing something about that still. I did not want him to tell the federal people that I was one of the partners in the still. I thought that was the best way to help him out. I was willing to arrange for his bond. It was through Steve Ostrowski that

I made connections with the bonding man, Horton. I feared someone had to be arrested and I thought the only arrest would be the man who lived in the premises, where the still was found. So, in my conversation with Horton, I wanted to take care of this case. When he mentioned \$500 I said that was a lot of money. I tried to get him to do it for less. He did not take me to one side and tell me he would give me \$100 out of it. I saw Horton a few days after I gave him the money. I can't recall where. He didn't ask me to give any address as to where I could be found. I was not staying away from home.

I haven't a nickname "Patsy". As far as I know, there was nothing in the indictment or warrant charging me with having anything to do with that 119th street still. I don't know they have a Statute of Limitations. I don't know anything about that. I was a partner and operator of that still in 1936. I was never indicted about that. It just died down. I was never in any trouble over there on the Stony Island still. Swede and I were partners in that still. I suppose the reason I didn't have any trouble in that still is they figured they had me in Cleveland. I suppose they did not want any more evidence against me not because the agents knew I was in this illegal business.

About eight months ago I told Mr. Bailey and Mr. Devereaux that I had an interest in 119th street. I first talked to my lawyer about it. I brought him from Cleveland to be with me, anything I said over at Mr. Bailey's. I brought my lawyer Ralph Vincent from Cleveland sometime last summer. We went to tell the Government people about it in the office of the alcohol tax unit in the new post office. Before that time Mr. Bailey had been out south in the neighborhood talking to me a couple of times. I denied then to him that I was a partner in the 119th Street still. I thought it best for my own interests to keep on lying to him. Then when I talked to my lawyer something made me change my mind. I was trying to do the best I could for myself. I want to help myself all I can.

I don't know Daniel Glasser except just to see him. I never had any dealings with him, legal or illegal.

As far as Mr. Kretske is concerned, the only dealings I had with him was that he was a lawyer and had already resigned out of this building. I was a partner in the Stony Island Avenue still. It operated exactly 7 weeks

before it was raided. Elmer and I were partners and
444 Tony, Peter, Frank and Mike Hodorowicz were the
other half. Frank is the boss, he was the representative of the brothers. And when the raid was followed by the indictment, I was not indicted. Tony Hodorowicz, Elmer Swanson and Clem Dowiat were indicted. I don't know that they knew anything about me being a partner. I don't know that they had any evidence. I did not pay anybody any money to leave me out of the indictment. I never did go with Elmer to the still on Stony Island. I stayed away and wanted to keep myself in the background. I did not arrange with the people who owned the premises to run the still. I did not expose my self to anybody. I didn't conceal nothing. There was no profits. The still was a re-cooker. The bunch bought the first run somewhere else. I did not have the still that was running the first run. I will tell you just what is right.

Mr. Horton took the money when he was out there talking to us about straightening things out. I never saw him give that money to anyone else and don't know if he did or not. The only still I ever told the Government about is the 119th street and the 69th—or the 79th street. Joppek was employed by us and part of his job was to tend to the stills. The man died with heart trouble. They say that Joppek died in the place where the still was being operated. I don't know anything about the Hodorowicz's interest in that still. I wasn't a partner in that. The widow did not come to me for any money. I don't know that she went to the Hodorowicz's. Mr. Bailey discussed with me that the man was dead, yes. He said he was dead and I told him that I knew it. He did not tell me he would go out and dig the man's body up. He never said anything like that. I knew when Frank Hodorowicz
445 was convicted in this court and sentenced to the penitentiary. I remember reading something in the paper about him getting a year and a day. I did not discuss it with him. I don't know what it costs to manufacture alcohol. I didn't have much schooling. If I did, I could figure it.

I was selling alcohol in Cleveland.

Examination by the Court.

My lawyer, Ralph Vincent, is a Cleveland lawyer. I talked with him and counseled with him before I talked with Mr. Bailey. He advised me to co-operate. He told me to tell the truth. Except for that indictment, I have not been indicted in this district.

Redirect Examination by Mr. Ward.

Q. Did you get a receipt for your \$500 from Horton?

A. No.

Q. Did you get a receipt for your \$500 from Kretske?

A. No, sir.

Q. Do you know what is in this document I am holding in my left hand?

A. No, I don't.

I don't know what evidence the Government has on me or what it has about my activities. I was never in Mr. Glasser's office at any time. I did not know that the alcohol tax unit had submitted a report on me on April 21 1938 and that that report was in Mr. Glasser's hands.

(Witness excused.)

STEVE OSTROWSKI, a witness produced on behalf of the Government, being first duly sworn, was examined and testified as follows:

446

Direct Examination by Mr. Ward.

My name is Steve Ostrowski. I live at 12143 South State Street, Chicago. I know the defendant, Tony Horton. I wouldn't say he is a friend of mine—I know him. I have known him about three years or four. I know Christ Del Rocco. I have a building contractor office. Patsy was over to my place about a year or two ago. I had a conversation with him. After that I saw Patsy and Tony Horton together in my office.

Cross-Examination by Mr. Stewart.

I had a card with the name of some bonding company on it, and these people were looking for a bondsman and I called up the number on the card. I had the card.

(Witness excused.)

HOMER A. GODDARD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Homer A. Goddard. I am a special investigator Alcohol Tax Unit and have been with the Government about seventeen years. I have had contact for the past several years with the United States Attorney's office in connection with cases that I have investigated. I know the defendants, Daniel Glasser and Norton Kretske.

In the early part of 1937 I had occasion to bring a violator by the name of Victor Joppek to the United States Attorney's office in room 826. It was on February 27, 1937. Saturday about noon.

447 Mr. Stewart: Your Honor, I am told this is not in the bill of particulars, and I want to make an objection on that ground.

The Court: Objection overruled.

Mr. Stewart: Exception.

Mr. Canaday, the first assistant United States Attorney, said something to Joppek in my presence. After that conversation, I returned on Monday morning to the United States Attorney's office accompanied by Special Investigator, Ben Smallwood, who died in 1939. I went, upon my return, to room 826. Mr. Smallwood and I sat on a bench in the outer office just outside the swinging gate. Joppek came in and sat on the bench just facing us. After ten or fifteen minutes, Mr. Glasser and Mr. Kretske came from within the office out through the swinging gate to us.

Mr. Smallwood and I undertook to explain the reason for picking up Joppek and bringing him in there. I told him he was identified with a still at 116 West 119th St. Mr. Kretske broke in and said in a loud voice, "Yes, yes, we know all about it." I explained to Mr. Glasser that this man leased the entire premises where the still had caught a-fire, and admitting signing the lease. He also admitted making payments of rent to the owner even as late as October 1st and the fire took place October 29th. Mr. Glasser laughed and said, "We don't arrest a man for that", and turned to Joppek and said, "go on home." As Joppek started out, Mr. Glasser said, "Hold on a

minute, you better be in my office a week from today". Joppek agreed and went out the door. Mr. Glasser and Mr. Kretske went on out the door and Mr. Smallwood and I returned to our office.

448 Kretske and Glasser went out the same door as Joppek. The door lead out into the corridor.

Cross-Examination by Mr. Stewart.

I am working under Mr. Yellowley.
(Witness excused.)

MICHAEL JAMES SIMANELLO, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Michael James Simanello. I live at 806 Hickory Street, Sycamore, Illinois. I have lived there since March 20, 1937. I know Leo Vitale. I believe the first time I met him was in my tavern around 1935. I was indicted by the Federal Grand Jury of this district. I am the same Michael Simanello who was named in indictment No. 30950, with Leo Vitale, Petro Mando and Dominick Sabatini. I was charged with operating a still in 1935. I was indicted on April 26, 1938. I know the defendant, Daniel Glasser. He was representing the Government in my case. I was in here the first time he called Leo Vitale and I up before Judge Wilkerson and he called off Vitale's name first. He told the judge, "Your Honor, in so far as this I have investigated Vitale's record and find that he has many or none. How shall we dispose of this case?" The Judge just looked down at the desk and Mr. Glasser suggested he should be punished with one hour on the custody of the Marshal. This to be exact is how Glasser started out, "Your Honor, I have here
449 Leo Vitale from Peru, Illinois, who on the night of October—invaded the premises of Charles Meyers, who purchased pickles; that while he was on the premises there was a raid going on at the time, and the sheriff asked this Vitale to halt, and he would not do it, and was shot by the sheriff. Now this man was shot on Meyers premises and insofar as I have investigated his record,

and find he has none, how should we dispose of the case?" There was a brief pause and he suggested to Judge Wilkerson that he be given one hour in custody of the Marshal. I didn't do anything, I just stood there. Mr. Glasser turned to me and said "Mr. Siminello. I have next Mr. Siminello. Guilty or not guilty?" I says "Not guilty." I says "What is it all about, anyhow?" He says "You go up to Room 800 or something, wait for me." At the time Vitale had a lawyer representing him. His last name is Spatuzzo. I left the courtroom and went up to Mr. Glasser's office to wait for him. I asked him what it was all about. I was inside Mr. Glasser's office when the conversation occurred. The lawyer representing Vitale was out in the hallway sitting down. Glasser said "So you don't know why you are here," so he reached in his pocket and pulled out a whole mess of papers, and started reading different things I had done, and then he said "Who is your lawyer", I said I had none, he said "Next time you come in this court, do not come alone, come with a lawyer," the door was open out in the hallway, and by the bench was Mr. Spatuzzo, I imagine he was waiting to see Mr. Glasser, after I got done. I went home from there. I met Spatuzzo in the hallway, he was waiting for his man to serve his hour in custody of the Marshal, and he talked on different subjects. Spatuzzo and I were talking alone, he told me how bad a charge I had against me. After that I employed Thomas O'Mara as my lawyer, he represented me before Judge Wilkerson. I don't recall what occurred when my case was disposed of. Judge Wilkerson gave me probation.

It was a small still, located on the Meyers farm at Lenore, Illinois.

On January 16th, 1940 I was present in lawyer O'Mara's office in Ottawa, Illinois. I had received a wire from my lawyer to come over there as soon as possible. I did not know what I was going for. When I went in there, there was no one in the office, but an office girl and Mr. O'Mara. About a minute or two after Mr. Glasser and some other fellow, not in this court, or around this table, came in. Mr. Glasser asked Mr. O'Mara to ask me a few questions. First he asked me if I had been subpoenaed in this case. I said yes. He asked me if any investigators were down to see me, and I said yes. He asked what they asked me, and I said they asked me if my trial was fixed. He

asked me what I told them, I said as far as I know that the small fee I had given Mr. O'Mara, if he had fixed anything for me, he must have been working for nothing. He asked me if I heard anything about Vitale fixing his case, I said no. He asked me what was said in the courtroom the day Vitale's case came up, I told him what I just said here. Mr. Glasser asked if I heard any rumors or anything of Vitale ever saying his trial was fixed, I said no. I never have talked to Vitale about that.

Cross-Examination by Mr. Stewart.

All I have been telling is the truth. I understood when Glasser came to O'Mara's office that he was preparing his trial, and I told him the truth, which is I paid O'Mara a small fee to defend me, just for legal services. I did not try to fix nothing. The United States Government agent came out to see me before Glasser did. I think he
451 name was Debrow. The tall man, that is the man. He did not tell me he knew my case was fixed, he just asked me if my case was fixed. I told him it was not as far as I knew. When Mr. Debrow was out there he questioned me, he did not ask me if Mr. Glasser recommended a lawyer, I told him I went to court without a lawyer and that Mr. Glasser told me not to come back unless I had a lawyer. When Mr. Glasser told me to go down to Mr. Glasser's office and wait for him, I did, that was the day I was in court without a lawyer. Then Mr. Glasser fished down and got a bunch of papers and he told me a lot of things that I did, some of those things I actually did do, enough to make a case against me, that was that I had something to do with a still. Before that time I had been in difficulty with the law only once, when I run through a stop sign, that was all. When I came back the second time I had a lawyer, and then the lawyer there told the Judge what my case was all about, and Mr. Glasser told the Judge what evidence they had against me, he told him enough to make out a case against me, he told him all the facts as far as I could understand. I don't remember if Mr. Glasser told Judge Wilkerson "Your Honor has all the facts in this case and whatever you do, is all right with me." I think all I can remember him telling Judge Wilkerson is that I had eight charges against me, and Judge Wilkerson asked him if he was willing to drop any of those charges, and he says

he was, and he dropped all but one charge, and they held me on that charge, that was the charge I pleaded guilty to, I don't know what the other charges were about. As far as I know I only had something to do with the still, if they had eight charges, that was all on the one thing, and they dropped all but one, so I could get probation on that one, and I went ahead and performed my probation, and tried to live an honest life.

452

Redirect Examination by Mr. Ward.

Vitale pleaded guilty before Judge Wilkerson the first time I was there. When I was up here for my hearing, and I plead guilty to my charge, Judge Wilkerson asked Mr. Glasser "There was some one else sentenced in this case, wasn't there?" Mr. Glasser says yes. Judge Wilkerson says "Vitale?" Mr. Glasser says yes. Judge Wilkerson says "What did he get?" He says "One hour in the custody of the Marshal." Judge Wilkerson looked down at the desk and says "One hour, how did that happen?" He says "Your Honor, I don't know."

Recross Examination by Mr. Stewart.

Vitale was convicted down at Peoria, that was not prior to the date he was in court. I believe it was October 22nd, or 21st, something like that, when Judge Wilkerson reminded everybody that there was somebody else in the case, because he told me to come back November 1st. I don't know it to be a fact that Vitale was convicted down in Peoria on the same case arising out of the same violation, charged with, up here, or that he was convicted on October 11th down there. I don't make it my business to know those things, all I know he had a charge pending against him in the Federal District Court in Chicago, that arose out of the same still that I was in. That was a different still, I was not in that, as far as I was concerned, there was no fixing, everything was honest.

Redirect Examination by Mr. Ward.

Before I was brought in here on my case between 1935 and 1938 I don't know how many stills Vitale was in.

453 PETER HODOROWICZ, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Peter Hodorowicz, I live at 12410 State Street, I am one of the Hodorowicz brothers, I have lived out there all my life, that is 26 years. I am working in the shop right now, hardware clerk, at present my employment is shipping clerk at Acme Steel. I have been with Acme Steel the last six months. Prior to that I was bootlegging in Roseland. I was not associated with all my brothers and others in the production of illicit alcohol. With some of them. I know a man by the name of Walter Hort. I know a man by the name of Walter Halovan. I was arrested with Walter Hort on or about January 12th, 1937 on 123rd and Green, by an agent by the name of Donohue and Smallwood. They were connected with the Treasury Department, Internal Revenue. I was taken to Hammond, Indiana. From Hammond I was left free. I was picked up on a subpoena about four days after I was taken to Indiana. I was picked up by the United States Marshal, and taken to the 11th Street District Police Station. I was afterwards taken before a United States Commissioner in this building, that is the white-haired man, Edwin K. Walker, on the eight floor of this building. I was taken there with Walter Hort, charged with alcohol. I was transporting 10—5 gallon cans of untaxpaid alcohol. I was transporting that alcohol by automobile. It was a 1937 Hudson. I bought the alcohol. I made a sale to the agents, before that, I had transported untaxpaid alcohol, not in this same Hudson automobile. I had more than one automobile. This Hudson was not in my name. I have an Illinois license. The Hudson car had an Indiana license at the time I was arrested. I wouldn't know in whose name was that license. Walter Hort was driving. I understand the
454 man I done business with, owned the car. I had brought alcohol in this car and was taking the car to a certain place, where they would pick it up, so they would not know where the automobile came from. They would find their car at a certain place and would get into it and drive away. Before I got the car set on the spot,

I was arrested. My automobile at that time was two blocks away. I had a license on my automobile, an Illinois license, it was a 1937 Chrysler. The license was in my wife's maiden name, I purchased that automobile in 1937, that particular license was in my wife's maiden name since I bought the car. I had another car prior to that one in my wife's maiden name, it was a Ford. My wife made application for that license. She drove that automobile, on and off with myself. I didn't use the other automobile for the purpose of transporting untaxpaid alcohol. I did not transport spirits in the Chrysler, it was in the Ford. I do not remember during 1936 visiting any particular place in this Ford car where I would pick up this untaxpaid spirits. I did transport untaxpaid spirits in this car.

Q. Where did you get the spirits?

A. I can't remember that long.

The Witness: In any event I drove that car around in Roseland and had it close to my home and in front of my brother's hardware store. They confiscated the Chrysler automobile which was parked two blocks away from the Hudson when I was arrested in the Hudson. The agents who made the arrest confiscated it. When I was two blocks away from the Hudson in the Chrysler I was arrested. I was taken in the Chrysler car. At that time the Government Agents had the Chrysler car. I did not know at that particular time I was being followed. I then went to the United States Commissioner's office and in here, after I was put in the Marshal's office. I remained in the Marshal's office on the eighth floor before being taken to the United States Commissioner about two hours. I was released on bail, that was so long ago it is pretty hard to remember who arranged for my bail. No, I can't remember, I think it was the professional bondsman. I believe it was Mr. Horton, the defendant here. I seen him at the Commissioner's office on January 12th, or at that particular time when I was released. I did not pay him anything for my bond, my brother arranged that, Frank. Frank was not there at the time I was released, I was told later on he arranged for the bond. I did not talk to Horton when I was released. I went on home. Walter Hort was with me, he was released at the same time, and went on home with me. Walter Hort at that time lived in West Pullman some place, I don't remember the address. In 1936 and 1937

we were pretty good friends. We did not run alcohol together, he came to my brother's place, the hardware store.

My brother Frank was a sheet metal worker. I don't know whether or not he ever manufactured or made any stills. Not that I know of at the hardware store. He may have in the back of it, but I don't know of it. I suppose I did see something.

Frank is the oldest of the brothers. When we were released on bail we had a hearing before the Commissioner. I believe I was represented by a lawyer. I don't believe I know the man's name. I made no arrangements to hire him, I don't see him in the court-room. It was not Mr. Stewart. I was told I had a lawyer. My brother Frank told me. My lawyer told me he was representing me, he didn't give me his card. To remember exactly, his name was Boddie, that was him. They used to call him Cap. That is what I call him, Cap. I had one hearing before the Commissioner. The first time that my case came up

before the Commissioner when I was released on bail, 456 I went on my way home. That day I did not get any hearing. Approximately a time about two weeks elapsed between the time I was released on bail and the time I came back to the Commissioner and had a hearing.

I know the defendant Glasser here. I know Mr. Kretske. I saw them at the hearing. They were representing the Government at that time. I don't believe Captal Boddie presented any papers to me to sign between the time I was released on bail and the time of my last hearing. If he did I don't recall it. After I was released on bail I talked with my brother Frank about my case. I did not ever have any discussion about my lawyer. Captal Boddie also represented Hort.

Q. Now, you came before the Commissioner that day for your hearing, and you say that Captain Boddie and Mr. Glasser and Mr. Kretske were there, is that right?

A. Mr. Kretske was there, Mr. Glasser was not there though.

The Witness: Oh, I don't remember the exact words that Mr. Kretske did say at that time.

Q. Well, approximately, if you can't say exactly.

A. I wouldn't remember that far what he said.

The Court: Give us your best recollection.

A. I did not pay much attention. He was only there, that is all I cared.

Q. All you cared was that the District Attorney was there, nothing else?

A. No, I was there, and that is all I knew about it.

Q. Did you expect to see Mr. Kretske there?

A. No, not exactly, I didn't know him at the time.

Q. That was the first time you had met him?

A. That is right.

457 Q. Now, did you have a conversation with your brother Frank after you returned from the Commissioner's office, when Mr. Kretske's name was mentioned?

Mr. Stewart: Now, I object to that, your Honor. That would not be proper. That is between two other people and has nothing to do with us.

The Court: Objection sustained.

Direct Examination by Mr. Ward (Resumed).

Between the time I was released on bail and the time I got back to the Commissioner's office, I mean for my hearing, I didn't know Mr. Kretske was going to be there representing the Government. I can describe the room I was in the day of the hearing, the Commissioner's room. There was a long table, he sits right in front of this table. His table is a little higher, and he has two witness stands, a seat like this, on the side of the desk. A witness chair. I, myself, and the agents and Walter Hort got in that chair before the Commissioner. And when the agents got in the chair they were asked questions, and they answered, and then I got in the chair. I recall when I got in the chair telling the Commissioner that that was my alcohol. I freely admitted openly that was my alcohol, before the Commissioner, and my lawyer asked me that, and I said it was. Walter Hort did not say so, he testified he was just helping me. In other words, I took the full responsibility for possessing that alcohol. The hearing lasted about an hour. Captain Boddie was asking the agents quite a few questions. Mr. Kretske asked the agents questions. I couldn't remember how many. Approximately a few. I mean a little more than ten.

Q. And Glasser was not there?

A. No, he was not.

458 The Witness: The only thing we were held over to the Grand Jury, and we made arrangements for

another bond. My brother Frank took care of that. He was not there at that time. My brother Mike was there at that time. Horton was there. I didn't sign no papers. It is possible if I did, I don't recall it. I believe I do remember now stepping over to the desk there and the Commissioner's secretary—. Then I went on my way home. The Commissioner said something like "The defendants are held to the District Court to await the action of the Grand Jury." I went home from the Commissioner's office. After that time I did not ever hear about that case. I was never tried before that offense. Walter Hort wasn't either. About the first of September 1937 I was arrested again in connection with a still at 118th Place. I know a man named Clem Dowiat, he is my nephew. My oldest brothers' son. His name was Clem Hodorowicz. He was married and took the name of Dowiat. That brother's name was Walter, he died in 1926 and his wife married a man named Dowiat. Dowiat was with me at the time of this still seizure. It was a re-cooker, about 120 gallon capacity. I operated that still for three weeks, I couldn't exactly say how much alcohol I manufactured during that three weeks. Approximately 400 gallons. I disposed of all of it. I did not pay the Government any taxes on that. I didn't pay the Government any taxes on any of the alcohol I manufactured. When I was arrested with reference to this still, I was taken to the Burnside police station, and from there to the new post-office. I don't recall who arrested me. I was in the building when I was arrested. I do not remember the day they came there. The still was in operation. There was a garage connected with the still. I kept empty cans in the garage, I would use my automobile in conjunction with the garage, the Ford. The same Ford where the license number was in my wife's name.

459 I would back this Ford into this garage and fill it with cans and pull out the drive-way. Before I was arrested at this still seizure, that occurred about four times. That Ford would hold about 20 five gallon cans. I believe it was a 1932 model car. It had heavy over-load springs on it, to sort of keep the car riding even, to keep the body up, so that if any of the boys were watching, it would not have the appearance of being loaded with cans. I drove this car out of the garage loaded with cans three times. That was in the past two weeks previous to my ar-

rest. I do not know whether the alcohol tax agents were watching that garage or not. I drove in and out and came back and at no time was stopped. Finally the day I was arrested. That was in conjunction with the still. I got to the United States Commissioner in that case, I went to the Marshal's office in that case. I was released on bail, my bond was \$1500.00, my brother arranged for it. I believe Herton was there. I saw Glasser or Kretske there at that time. It was the same Commissioner. I had a hearing on that case, it was not the same day I was released on bond. I was arrested on September 1st, 1937, I got to the Commissioners about September 2nd, the following day. The case was continued for about two weeks. I think my case came up the 23rd of September. The 24th, I am not sure. I talked to Frank about the case between September 1st and the 24th. I believe I did have a lawyer.

Q. Who was it?

A. I did not pay much attention to the lawyer.

Q. Why?

Mr. Stewart: I object to that. It wouldn't make any difference.

Mr. Ward: It is important.

The Court: Overruled.

460 Mr. Ward: Why not? Why didn't you pay any attention to your lawyer, Pete?

A. I know the man's right name. Just a moment. I just slipped up. I didn't mean that.

Q. Look around.

A. I can't remember the man's name exactly.

Q. Look around and see whether he is here.

A. I can't remember.

Q. Was his name Balaban?

A. That is it, I believe. I am pretty sure that is it.

Q. Is Balaban here? Is this the man (indicating)?

A. No, no. I don't remember the lawyer, to tell you the truth.

Mr. Stewart: He is not going to talk for anybody, for you.

Mr. Ward: I will just keep on trying.

Q. Are you sure now, Pete, this is not the man?

A. (No answer.)

The Witness: Yes, I had a conversation with my law-

yer. I supposed he talked about the statutes and principals of law which were going to guide him in handling my case before the Commissiononer. I suppose he did, I didn't pay any attention.

Q. Did he take down any of those buckram bound books, and show them to you, Pete?

A. No.

Q. Did he tell you what the charge was?

A. He did.

Q. What did he say?

A. He told me to plead guilty.

Q. Did he tell you to claim ownership of the still?

A. That is right.

461 The Witness: Between the time I was released on bail the first time and the time that my lawyer told me to claim ownership of the still, I had discussed with my brother about claiming ownership of that still, that was Frank. Before Frank discussed the proposition with me, I had heard the word "Claim ownership of the still." My brother told me to do that. Before my brother told me that, the lawyer did. I talked to my lawyer about that before my brother. My brother hired my lawyer. I found that out after I got home. After I got released on bond that same day. My brother didn't tell me he had made arrangements to have a lawyer. The lawyer was there. Up in front of the Commissioner for the bond. I believe he was the same day I was arrested.

Q. Now, if there was any money paid to your lawyer, you did not pay it, did you?

A. No, sir.

Q. Frank took care of the money arrangement?

A. That is right.

Q. Were you working for Frank at that time?

A. No, I was not.

Q. Or were you on your own?

A. I was.

Q. Did Frank handle your money for you?

A. That is right.

Q. Did he ever ask you for the money that he paid your lawyer?

A. He did.

Q. How much did he ask you for?

A. I think it was about \$250.00. I am not sure though.

Q. When did he ask you for that?

462 A. When I was going to have my hearing.

Q. When you were going to have the hearing. Do you recall the day you went down to the Commissioner's and had your hearing, do you recall that day?

A. (No answer.)

Q. I mean now, that is the second time, speaking of September 24th, do you recall that day?

A. The actual hearing?

Q. Yes?

A. I do.

Q. Do you recall leaving from your home in the morning?

A. I do.

Q. Who came with you to the United States Commissioner's Office?

A. My brother Mike.

Q. What?

A. My brother Mike.

Q. Was Frank at home that morning?

A. I believe he was.

Q. How far do you live, how far was your home from Frank's home?

A. Four blocks.

Q. Do you recall this evening, Pete, seeing your brother Frank?

A. I do.

Q. Do you know whether or not your brother Frank took any trip with his automobile the evening before, do you know?

A. No, I don't exactly. He was always going out.

The Witness: Frank goes his way and I go mine. I was dismissed in the second case, it never came up again.

463 The agents were there at the hearing. Glasser was there. Kretske wasn't there that day. Glasser was cross-examining the agents, I don't remember what was said by Glasser after this cross-examination. I remember when the Commissioner said "Discharged". That meant I could go home. I did not stay there very long after that, that is September 24th, 1937.

Examination by the Court.

That is the case where I was talking about where I agreed to assume the ownership of the still. I told that to the Commissioner. I was on the witness stand before the Commissioner. I was examined by my attorney, I was cross-examined by Mr. Glasser. At that time while I was on the stand, I told the Commissioner that I was the owner of that still. There was no legal search of this certain building.

Direct Examination (Resumed) by Mr. Ward.

The place where the still was I think was 35 E. 118th Place. Down the hill, it was E. 118th Place. In 1938 along about the spring I was present in the rear of my brother Frank's hardware store when Norton Kretske called at the store. They had a conversation at that time, my brother Frank and Kretske. I do not remember the exact words of that conversation. There was an indictment coming out. Kretske was over there and asked him for some money. He said for \$1,000.00 he would squeeze it.

Q. Now, did he say anything further than that? Did he give Frank some information at that time?

A. My brother jumped up. Got awfully mad and told him he would not give nobody \$1,000.00. He left.

Q. Did you hear Kretske say anything about why he wanted \$1,000.00, in addition to what you have told us?

A. No.

464 Q. Did he mention something about somebody having made a buy—

Mr. Ward: Read that.

(Last question read as recorded.)

The Witness: I was not in the room. I was next to the room. When he walked out I overheard it. Whether there was something about a buy having been made, I don't recall. I was indicted in 1938, long about June 1938, Glasser represented the Government in my case, I recall when it was tried. It was tried before Judge Woodward, Hess represented me in that case, I mean Ed Hess. Hess represented me right from the start of the case.

Q. Yes. Was Roth in that case?

A. Not that I remember.

The Witness: Mr. Hess represented me, I was convicted and Judge Woodward sentenced me to nine months. My case was appealed to the Circuit Court of Appeals. I believe at the present time there is an application pending before Judge Woodward for probation in my case. I went over to Milan for a few days, then I perfected my appeal and came back. That was the jury case before Judge Woodward. I don't know a lawyer named Struett. I heard his name though. My brother took care of my legal matters. If he hired Mr. Stewart, I don't know anything about the circumstances under which he hired him or what papers he filed. I don't remember signing any papers before I was discharged before the United States Commissioner, previous to the last case. I may have signed some papers and not recall it. Between March 1935 and June 1938, I was arrested for alcohol tax law violations, three times. Those are the three times that I have mentioned here.

Examination by the Court.

I pled guilty and was convicted once, that is the last time. I was discharged on the still case, I didn't hear nothing about the other cases.

465 *Direct Examination (Resumed) by Mr. Ward.*

The Still I was arrested on and charged with having in my possession was in the basement at the address where it was seized. It was my still. There was a still next door. The first one was seized. Mine. I didn't know anything about the still that was next door to my place. I operated my still for about three weeks, now during that three weeks I did not know anything about the still being located next to my place. I found out after mine was taken. The next day. When I got home I found out. My brother told me. There wasn't anything said before the United States Commissioner about that other still. I don't know whether the agents were watching that still and happened to discover mine or vice versa. No one told me about that, I didn't know anything about it. The place next door where this still was discovered had a garage on it. I didn't pay any

attention to it. I know the people that live next door but I don't know their last name. I can't remember how long I had known them before I was arrested for that still. The still was cold when I was arrested. I know what a cold still is. It takes about twelve hours for a still to cool off. I did not have any fermenting mash in this place. There was no mash. It was a recooker. I would recook raw alcohol, I would haul that alcohol to the recooker. Pull into the garage, I would bring the raw alcohol to this place by car, the still was in the basement of the garage, so when I pulled into the garage I would not have to expose myself in open view to get into the basement. There was a stairway connecting the garage and the basement, so I would pull into the garage, take my cans out of the car, and carry them down the stairs and put them in to recook, and when I recook I would fill the cans and take them back the same way and go out.

466 Exhibit #39 is the front yard of the entrance to this garage and this still. The address on there is 120 and 124 E. 118th Place. Exhibit #40 is the same picture but it shows more of one building than the other. #41 is a column, it looks like the one that was the column of the re-cooker that was found in there. #42 is the front view of this garage, and this door to the garage operates by up-lift. #43 is the steam boiler that was not operating the re-cooker. And when that alcohol was re-cooked, the proof spirits would be about 183. #44 represents a pipe, I believe it is part of the re-cooker. #48 represents the coils for the bottom of the pot. #46 represents a trap-door. #47 storage tank. #45 rear of the garage. #50 the front of the garage and the front of the building where the garage stood. #51 the boiler. #49 represents parts of the cans and the dismantling.

Cross-Examination by Mr. Stewart.

Exhibit #52 is something I signed and swore to, that is my signature where it says "Peter Hodorowicz" I swore to it.

(Witness excused.)

WALTER HALEVAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Walter Halevan, I live at 120-126 South Union Avenue, Chicago. I am sometimes known as Walter Hort. I have been known as ~~Walter Hort~~ since 1937 when I was arrested with Peter Hodorowicz. I don't remember the name of the first officer that I gave that name to, that was when I was arrested with Peter Hodorowicz, and I was taken before United States Commissioner Walker. That was in January. No, we 467 were taken to Indiana, and we finally got to the Commissioner's office in Hammond, Indiana, I was taken there with Pete Hodorowicz and then later on finally got into the custody of the United States Marshal here in this building, and was taken before the United States Commissioner. I guess I was released on bond, I don't know how much my bail was. I don't know who arranged for my bail. I didn't pay any money for my bail. The way I understood why I was arrested was, Pete Hodorowicz was supposed to sell the alcohol to the agents. I was with him at the time he made the transaction in the car. The way I understood it Pete was supposed to have sold a load of alcohol to some United States Agents. I don't know what kind of car it was. I was in Peter Hodorowicz's car at the time. I was not in the car which actually had the alcohol, at the time Pete was arrested. I was sitting in Pete's car, that was about two blocks from where he was arrested. The way I understood he was supposed to go out with the agents to the car. I was arrested when Peter asked me to go with him, and this was at the tavern, and he drove about two blocks or a half block or two blocks, I just don't remember, and he was supposed, they did some business there, in Peter's own car. After the transaction or business he made the arrest. I was sitting with Pete in his car when I was arrested. The agent was in the back seat. I don't know what I was charged with. I never helped Pete in the transportation of alcohol before that day. Well, I was in the tavern at the time, I used to work in this tavern as a bar-

keeper. I went to the store, to the hardware store, to get some bulbs for the saloon, and Pete asked me to drive this car to a certain address. The coupe. I don't know the make of the car. I don't know whether it was a Hudson or not. I started from the store, I would say, about a block away, or a half a block away. I did not know anything about what I was doing. He just asked me to drive the car down for him to a certain address. I had known Pete about four years before that. He asked me to drive the car a lot of times. I had driven his car around, his own car, his private car, nothing in it. I never visited any of those stills with Pete. I don't know anything about Pete's business. So far as I knew that time I was arrested, I was just going with Pete. I didn't know why. I didn't know why I was arrested until they told me. I couldn't say anything. Nobody tried to stop me. I was arrested with Pete. Why I understood he violated the law. I was with him at the time. What Pete told me. He told me that when we were at the jail, going to jail over to Hammond. I never talked to Mr. Glasser about my case. I know what the United States Commissioner is, I think it is on the eighth floor of this building that he is, I recall being there at the time of my hearing. I was arrested three weeks later, after that, in the Packard automobile.

I was there before the Commissioner when witnesses got on the stand. I didn't hear very much, I was all excited.

Q. Was Mr. Glasser there?

A. I think that Kretske was there at the time.

Q. Kretske?

A. That is right.

The Witness: I did not hear him say anything. I was all excited. I did not know what it was all about, what they were talking about. I told my story on the stand, the Judge asked me, I told the story that I have told now. Kretske was there, he didn't ask me anything, I know Glasser to see him, by sight. I know Kretske by sight. And before that day I hadn't met Kretske. 469 I don't remember Kretske asking me any questions.

The Judge asked me to tell my own story. I told him, and when I got through, I went home. I believe I signed some papers, I don't know what they were. When I left the Commissioner's room, I thought the matter was all over with, as far as I was concerned. I knew later that

I was held to the District Court to await the action of the Grand Jury. It was supposed to be a hearing. Peter told me it was supposed to be a hearing. I had two hearings. Pete told me were held over.

Q. Now, this last hearing was on September 24th, was it not?

A. I don't remember the date.

The Witness: It was about the last part of the month, I had never been arrested before. This did not stand out in my memory. It was January, 1937, last part of January. The second hearing must have been a couple of weeks later, I don't know for sure, still in January. Kretske was present at the second hearing before the Commissioner, I don't remember what was said by him. I don't think he said anything, if I remember right. I did not say anything. My attorney did, I believe. He was Boddie. I did not employ him. I did not pay him anything. I did not know for quite a while afterwards that I was held to the District Court to await the action of the Grand Jury. I would say about five or six months, or so. I found that out from Peter. I never came back in the building again after that last time before the United States Commissioner. As far as I know, I don't know anything about what happened to that case. I have never been in any court, any district court, to answer to an indictment for that offense.

470 In January of 1937 I had occasion to drive a Packard automobile. It was the last part of January. I was arrested while driving that car. I didn't know at that time what was in the car. I found out I had alcohol in there. I don't know if it was in cans, or how, I didn't see the amount. I did not find out afterwards there were five cans, nobody told me that. All I know is there was alcohol in it. No one ever told me there were 68—5 gallon cans in that car. I never found that out anywhere. I was brought before the United States Commissioner. I would say that Packard was a 1928 model, I was alone at the time. I was in a tavern at 123rd and Green. The tavern was operated by a man by the name of Butch, in Calumet Park, Ill.

I knew Butch before that day, he did not tell me to drive his car, a fellow came in there. I was driving, the fellow used to come in there all the time, he is known as Berg Dagel, and asked me if I would drive his car to Ashland Avenue. I said I would. I drove the car to Ashland, but

before I got to Ashland Avenue, I was pulled over by these agents, and arrested.

I remember being before the United States Commissioner.

Q. Do you remember Mr. Glasser being there?

A. No, sir, I think Kretske was there. That is right, I am sure.

Q. Representing the Government?

A. Yes, sir.

The Witness: Kretske did not ask me any questions. I don't think I said anything. I think the lawyer did the talking. I believe my lawyer was Boddie. I did not hire him, I do not know who did, I do not know how he happened to be there. I think I was discharged before the Commissioner. I never heard about the case after that.

I was never re-arrested or re-indicted for that case. 471 Previous to my driving that Packard car, I was not in the business of transporting alcohol. I was never in it before. I happened into this place this day, and this fellow picked me out. I knew him. He used to come into the tavern quite a little. The agent took the Packard car I was driving. I am quite sure I told the Commissioner the same story I am telling this jury about that Packard car, I am not sure, it has been so long ago, I believe I did.
(Witness excused.)

CLEM DOWIAT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Clem Dowiat.

The Court: I notice some of the jurors making notes. You have no right to do that.

A Juror: I am just writing the names now.

The Court: You can't do that. You have to rely on your memory. I am sorry.

The Witness: I live at 36 E. 120th Place. I believe I have seen you before I took the stand. You might have talked to me, not that I remember. If you did, I don't remember. I am a nephew of Frank Hodorowicz. My father and Frank were brothers, my father's name was Walter Hodorowicz. I changed my name. I am 20 years

old. I have spent the 20 years of my life all over. I spent those 20 years on the south side of Chicago. That is the place that is known as Roseland. I am employed at the present time, at the Acme Steel, in Riverdale. I have worked there five or six months. Previous to that I was working in the subway on Milwaukee Avenue, about two or three months.

472 Previous to 1937 I know what business my uncles were in. They were in the hardware business. Right at the present they are not engaged in the sale of alcohol on which the tax has not been paid. I know they had a hardware store over on the south side. I visited the store many times, my uncle Frank Hodorowicz runs that hardware store. He ran that hardware store ever since I was a little kid, I imagine. I know Elmer Swanson. I know Christ Del Rocco. The name Dankowski doesn't seem to be familiar to me. I know Walter Hort. I do not know a man named Wroblewski. I gathered that Swanson and Del Rocco are more or less in the liquor business out there on the south side. I have heard from different parties they have been in that business, that is all.

I was arrested in June, 1937, charged with transporting nontaxpaid alcohol. I was arrested on 123rd and Halsted Street, I remember that date, I believe I was driving a model A Ford. I got that Ford from some fellow, I don't know his name or anything, all I was told was to pick up whatever was to be done. The fellow I worked for told me to pick it up. That was Peter Hodorowicz. I recall being taken to the United States Commissioner's office. On that particular day that I was driving this Ford car, I had seven, five gallon cans of alcohol, in it. Well, I got the alcohol, I put it in the car, I got it out of some garage, I don't remember exactly where the garage was. I got it at 123rd and Ashland, I don't know a man named John Kazmicerczski. I never got no alcohol from any man by that name. I pronounce that name ((pronouncing name) Kazmicerczski. Yes, I have heard of him. Your Polish pronunciation wasn't good, and that is why I didn't know it, he never gave the alcohol to me, I went in the garage, and I took it, because we had that place as a loading
473 spot. I left with the alcohol and I was arrested and brought before the United States Commissioner. When I said we had a loading spot, I meant Pete Hodorowicz, I was working for him. I recall being brought before United States Commissioner Walker, it might have been around

the 1st of July or 2nd. I don't recall anything occurring there before the Commissioner after I was brought in, except that I was dismissed in front of the Commissioner. I believe a fellow by the name of Mr. Glasser represented the Government there. This Mr. Glasser is here in the courtroom. He never said nothing to me, he didn't say anything to the Commissioner that I seen.

Examination by the Court.

I didn't hear Glasser say anything. We were not in the Commissioner's office, on the outside, I was taken before the Commissioner, I wasn't in his private office, I was in his courtroom. Mr. Glasser never talked to the Commissioner while I was there. I had an attorney representing me at that time, I don't recall who he was. I don't know the name, he is in the courtroom here, the fellow in the green suit, Mr. Balaban. I did not hear anything he or Mr. Glasser said to the Commissioner about my case (Mr. Balaban arises) that might have been, I don't know. I don't remember all of that, your Honor. I don't believe there is anyone else in the courtroom who might have been my attorney. My impression now is he was my attorney.

Direct Examination by Mr. Ward (Resumed).

The commissioner was a white haired man, he was an elderly fellow, with snow white hair, there was nothing said like taking an oath to testify. I believe I heard something about waiving examinations, that may have been said. I did not leave the Commissioner's room until I
474 heard the case was dismissed. I recall it now being dismissed, nothing was said, I just heard it was dismissed, and they all walked out, that is all. I heard that from the Judge. I believe I was re-arrested, charged with that offense, I don't exactly remember when. I was arrested after that, but not charged with that offense, I was charged with other offenses after that, but that one I was not. I believe I was arrested on September 1st, 1937, in connection with a still at 120-124 E. 118th Place. It was around September or October, something like that. I was in a garage there at the time some agents from the Alcohol Tax Bureau knocked on the back door, and I escaped out through the rear and ran away. I was brought

back, I recall the time you are speaking about. I was placed under arrest and brought before the Commissioner. Pete Hodorowicz was arrested with me. No one else that I remember. I do not know a man or a boy named John Wroblewski. I have heard the name of Eddie Sparrow, I know his brother John. I never heard that name Wroblewski. I know him by the name of Sparrow. I was brought again before Commissioner Walker. I did not talk to my Uncle Frank about that case, I never had nothing to talk about with Frank, and Pete Hodorowicz told me there was never nothing to worry about.

I know Mr. Kretske, the defendant, I went to his office once, I believe, that was in the year 1937, or first part of 1938. I don't remember, it was after this arrest we have spoken about, this last one I believe, I was out on bond, and I went to Kretske's office with my Uncle Frank. I seen Kretske in the outer office, I was not there at the time when my uncle had a conversation with Kretske. If he had a conversation. All I was told was to wait in the outer office. All I know is I was in the waiting room. That is all the further I went. I knew I was in Mr. Kretske's office. I seen him there. That is why I knew it was his.

475 My uncle remained in the office with Kretske about ten or fifteen minutes, I imagine. He rejoined me and we left. My case came up before the Commissioner after that. It was discharged. I was arrested after that again.

The Court: Who was at the Commissioner's office on the last occasion you referred to.

A. Mr. Glasser, and my attorney which I do not remember.

Q. Did you have a different attorney at that time, or was it the same one you had at the first trial?

A. I believe it was the same one.

The Witness: I never had a thing to do with what was said by the lawyers representing the Government and representing me. All I was told was everything was all right. So I never worried about it.

Examination by the Court.

I didn't talk to anyone at all before I went to the Commissioner's office, all I was told was to say nothing, Pete Hodorowicz told me that.

Direct Examination by Mr. Ward (Resumed).

I believe I signed Exhibit # 54, I probably read it.

Q. Was Mr. Balaban there when you signed it?

The Court: You are now speaking about the attorney you referred to?

A. Yes, sir. All I was told was to sign it, that is all.

Q. Did you swear to it?

A. Yes, sir.

Q. As to what was in there, you didn't know much about, did you?

Mr. Stewart: I object to that, he didn't say that.

476 The Witness: I might have read it, but I can't remember what was in it. My God, it's passed.

Direct Examination by Mr. Ward (Resumed).

I was dismissed, I don't remember when. Before I was dismissed, I signed Exhibit # 54. I don't remember.

I said that on or about December 31st, 1937, I was again arrested, not for operating a still, not in connection with a still at 6945 Stony Island Avenue. I was passing near the premises and I was picked up. I did not know of any connection my uncle Anthony Hodorowicz had with that still. I did not know that day when I was passing by, that Anthony Hodorowicz had any connection with that still. I did not know Elmer Swanson had anything to do with that still. I was with Tony Hodorowicz at that particular place, looking for a second hand car. That is all I know. We happened to be passing by this place, so the Federal Agents stepped out of a car, and said, "Come along with us". So I went. I might have been 100 feet either way from 6945 Stony Island. I don't know from the outside. After I was arrested I heard a still was found in that place. I went to the Commissioner's office again in that case. I was arrested and on bail. I don't remember who signed my bond. My bail was furnished. I don't know by who, it was all to be taken care of, that is all I know. I didn't pay anything for it. I was getting \$25.00 a week for my services. Pete Hodorowicz was paying me.

Q. Did you have occasion to visit Kretske's office at that time with reference to the Stony Island Avenue seizure.

A. No, I did not.

The Witness: I know an attorney by the name of Alfred Roth. He is here in the court room, the first time

I saw him was in his office. Right after that. It was 477 after the last arrest I have spoken about. I went over to Roth's office with my uncle. I went direct from my home.

The Court: Did you stop enroute, stop any place before you got there?

A. No, sir.

Mr. Ward: Doesn't it refresh your recollection if I told you you stopped at Kretske's office?

Mr. Stewart: Your Honor, I object to that. We are entitled to the witness' testimony.

The Court: All right, but this witness is a little reluctant, he is rather evasive at times. Objection overruled. You may answer.

The Witness: I didn't get it.

Mr. Ward: Q. Would it refresh your recollection if I was to tell you you first visited Kretske's office, and from there you went to Roth's office?

A. That might have been.

Q. And do you recall being indicted for that offense?

A. No, sir.

Q. Do you know what an indictment is?

A. No, sir.

Q. What?

A. No, sir.

Examination by the Court.

Q. Never heard of one, did you?

A. No, sir.

Q. Never heard of anyone being indicted?

A. Oh, yes, sir.

Q. Sure, you did. Don't try to evade, and we will get along faster. Now, the Government has a lot of information about your conduct. You might just as well answer 478 questions without trying to evade—

Direct Examination by Mr. Ward (Resumed).

I was indicted, the case came up before Judge Woodward, I recall that. That was not the case where I was indicted with Anthony Hodorowicz and Elmer Swanson. I was indicted. I know what an indictment is. On the Stony

Island still I was arrested, I was held on bonds. I recall Roth being my lawyer. He was for a while, I might have gone to Judge Woodward's courtroom with my uncle and Elmer Swanson. I might have, not that I remember. I believe I was there once with Mr. Roth. My uncles were with me. My uncle Anthony, yes sir.

Q. You recall now, being in Court before the Judge with your Uncle, and Swanson, is that right?

A. Yes, sir.

The Court: Do you remember what court you were in, before what Judge?

A. In front of Walker, Commissioner Walker.

The Court: That is the Commissioner?

Mr. Ward: Do you remember being in a court room similar to this, that looked like this room?

A. No, sir.

The Court: Just mention the name of the Judge.

Mr. Ward: Judge Woodward, I asked him that.

The Court: Were you in Judge Woodward's court room?

A. No, sir, Walker.

Q. Were you ever in Judge Woodward's court room?

A. Yes, sir, I was on a different case. You are getting me all mixed up. I don't know if I am coming or going.

Q. Just listen to the question. As far as you are
479 concerned, this is all water over the dam, so you might just as well answer the questions truthfully.

A. Yes, sir.

Mr. Ward: Q. I asked you if you were indicted in connection with the 69th and Stony Island Avenue still, does that get you mixed up?

A. Yes.

Q. You were indicted, were you not?

A. Well, there was a different case.

Q. No, I am speaking about this one. Now, I am asking you about it?

A. Well, that was before Commissioner Walker.

Q. I am asking you, if you don't know, say so. I don't care how you answer the questions, as long as you answer them. Do you know when you went to Judge Woodward's courtroom, what you were indicted for?

A. I wasn't in front of Judge Woodward.

Q. You never went in front of Judge Woodward?

A. Yes, sir, afterwards.

Examination by the Court.

When I was in front of Judge Woodward, I knew what I was there for, that was on a different kind of a case. Conspiracy case. Conspiracy to sell alcohol to the Government.

Direct Examination by Mr. Ward (Resumed).

I was tried before Judge Woodward, with my uncles Frank, Mike and Pete, and Clem Dowiat, those are the four defendants. I was arrested on the 69th and Stony Island Avenue case. I did not go to Judge Woodward's court on that case, that I know of.

The Court: All right, that is that.

480

Examination by the Court.

Yes, sir, I recall going to the Commissioner's office on that case. As far as I was concerned it was held for a while, and it was supposed to be taken care of, that is all I understood, that everything was going to be all right.

Q. You never had to appear on that case, after that?

A. No, sir.

The Witness: My name appears on Exhibit #55, which purports to be a copy of the indictment in 30794. On the back of it, it is marked indictment, and the number is 30794. That was filed on February 3rd, 1938, the building described in the indictment is 6949 Stony Island Avenue, yes, sir, I remember that. I remember when the indictment was returned.

Q. You were arrested after that return—you don't need to hesitate about it.

A. Well, it must have been a different case, I guess.

Q. Do you remember anything about this particular case?

A. Yes, sir, I do.

Direct Examination by Mr. Ward (Resumed).

I believe Mr. Roth talked to me about this particular case, at his office. I recall going to the court-room that is a different case altogether. After the indictment was returned, I appeared before the Judge, the rest of the time I appeared before the Commissioner. Well, as far as

seeing the attorney, I was hardly ever there. All I was told when the case come over there, I should be there. I was only probably once there. From Mr. Roth's office I appeared with him I believe, before the Commissioner, but I don't know whatever became of the case. It kept dragging, that is all I know. I know Mr. Deveraux, 481 the special agent of the Bureau of Investigation. I recognize Mr. Deaveraux over there. He asked me about my cases and the violations I was in. I told him about it.

Cross-Examination by Mr. Stewart.

When I was convicted in a prosecution where Mr. Glasser represented the Government and there was a jury there, I had a trial before Judge Woodward. I was convicted along with Frank Hodorowicz, Mike Hodorowicz and myself and that is still over my head. I applied for probation and signed this exhibit #52, which you now show me, I probably knew what was in it when I signed it. I know I signed a lot of papers. I know I signed an application to be placed on probation. Pete Hodorowicz paid me \$25.00 a week for about a year, I guess, for driving alcohol. I knew it was illegal. I knew from what I heard in the neighborhood they were all in the business, and I know Swanson and Patsy Del Rocco were in that business. I might have attended a still. I might have and then forgot, I never attended a still over there on Stony Island. I don't remember whether I attended a still or not, I don't remember the location of any still that I might have attended. I did attend a re-cooker on 118, and I don't know the exact address, I think it was between 118th and Michigan Avenue, or Indiana Avenue. I don't remember the address. I didn't attend it, I never cooked the stuff, I just came in there for an empty can that day, I was not the owner of that still on 118th St. Pete Hodorowicz owned it, I guess. I never owned any part of it. The only interest I had was I was being paid to help those Hodorowicz' in that alcohol business, it was in 1937 or 1938. In Exhibit #54 I say that still is my personal property. That wasn't true, that was a lie. I never swore to it as a lie. I see the notary on there, I never read any papers. All I 482 was told was to sign it. That is my signature. I signed anything, and swore to anything whether it was true or false.

Redirect Examination by Mr. Ward.

Q. When you signed this paper, Clem—

A. Yes, sir.

Q. You were in this lawyer, Balaban's office?

A. Yes, sir.

Q. And had this been prepared and given to you for signature?

A. Well, I was told—

Q. Is that right?

A. All I was told was to sign it.

Q. Who told you to sign it, Balaban?

A. My uncles.

Q. Was Balaban there?

A. Yes, sir.

(Witness excused.)

CLARENCE P. ROSSNER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Ward.

My name is Clarence P. Rossner, I live in Chicago, Illinois, my occupation investigator, alcohol tax unit, since 1934.

I recall visiting the premises at 124 E. 118th Place, in September, 1937 and seizing a still there, it is in Chicago. I was not alone at the time, investigators Lane, Lavelly, Dugdale, Inlow and Suderburg. I arrested Clem Dowiat, investigator Lavelly arrested Peter Hodorowicz. We went to the premises, and as we arrived at the premises, Investigator Suderburg smelled alcohol,—we 483 went to the premises, and I went through the driveway, I looked through the window, and saw a car, a Ford '28, standing in the garage, with five gallon cans under it. I wrapped on the door, and announced my identity, and started to force the door, and as I forced the door, the door in the back end of the garage opened, and two men ran out, they were later found out to be Clem Dowiat and Pete Hodorowicz. The point that I was standing on and looking through the window was on the premises of 124 E. 118th Place, it was in the driveway. Before I looked through there there was a discussion about

the odor of fermenting mash. At that particular time I also had in my possession a search warrant, and that search warrant was for the premises known and described as 128 E. 118th Place. I have never visited the premises subsequent to the arrest of Pete Hodorowicz and Clem Dowiat. After arresting Pete, I went over there. I found a 250 gallon St. Louis still concealed in the garage, under the garage. There was no connection between the two stills at 128 and 124 E. 118th Place. The parties found there were named Lewandowski. At the premises of 118th Place I found Angelina Lewandowski and her daughter, I had a conversation with her at that time. I do not know her by any other name than Lewandowski. At 124 there was also arrested a young man, about fifteen or sixteen years old, his name was John Wroblewski. I know his father. I had arrested him for transporting alcohol. The fifteen year old Wroblewski was brought into the garage by Investigator Lane. I then took him to his mother Mrs. Wroblewski. I had some conversation with her. After I left the fifteen year old lad with his mother I went back into the garage, and when I returned, the lad was not there. I asked his mother where he went, she told me.

I didn't see him any more that day. When I got into 484 124 I first found a large built-in ice box, cooler, and after about an hour and a half or an hour and fifteen minutes, I found a trap door in one wall, which led underneath the ice box. It took us about an hour or an hour and fifteen minutes to find this still, and I finally found it.

The next day I took Peter and Clem Dowiat to the United States Commissioner and made a return on my 128 warrant. I had no warrant for 124. I was present at the United States Commissioner's hearing, Mr. Walker. Mr. Glasser represented the Government, I testified in that case, I don't recall the dates the case came up before the Commissioner. I did not make notes on the different dates, it came up—I recall it was in September of 1937, and finally came up on September 23rd, 1937 and which time I gave testimony. I don't recall, who if anyone, represented the defendants. I recall being questioned on the witness stand, and stating the facts substantially as I have stated them here, regarding the Commissioner. I recall someone else testifying in that case. Peter Hodorowicz testified. At the conclusion of the hearing of the testimony, Commissioner Walker did not announce his

decision. He said he would render his decision the next day. We were told it wouldn't be necessary to return, and we did not return. Mr. Glasser represented the Government. The pictures I have just examined are a likeness of 120 E. 118th Place. 128 E. 118th Place. The pictures are correct representations of the still found there.

Exhibit #56 represents the still underneath the ground at 128 E. 118th Place. Exhibit #57 represents the still room underneath the garage at 128 E. 118th Place.

Cross-Examination by Mr. Stewart.

When I was before the Commissioner on this case the matter at issue was whether or not the evidence should 485 be suppressed. That was what was up for decision.

And I testified concerning the facts surrounding the manner in which I made the search and the arrest. I was rather severely cross-examined on those circumstances by Mr. Balaban here, who represented the defendants. And the commissioner asked me questions. Mr. Glasser asked me questions. And those were thoroughly gone into, as far as my knowledge of that was concerned and I didn't tell any untruths, and I didn't suppress any of the facts, and I submitted all I had to the Commissioner on that subject. Then the question of what should be done with the motion became a question of fact and law for the Commissioner to decide, and he decided that against the Government, and there was nothing I could have done about that, and I have lost cases like that before, and that is just one of the chances I take. I go in and when these contests arise I do the best I can and then I lose. I did the best I could in this case, there was nothing crooked at that time. I was not present in Mr. Igoe's office after that when Mr. Herrick was called in, concerning the circumstances of that search. I did not know Mr. Herrick was questioned about it.

The original investigation upon which the search warrant was based was not obtained by me, the name of that agent is investigator Sudenburg. I believe he was from Indianapolis, he had been here about two or three months. I couldn't say how long he was here before he went out to get this information. I don't know if he was familiar with the neighborhood or not, I know he got the address wrong. That was his mistake.

At the time I was not unfriendly to Mr. Glasser.

Mr. Ward: I object to that, as carrying with it the implication he is now unfriendly with Mr. Glasser.

The Court: I was just going to follow that up, if he didn't.

486 Mr. Stewart: We will get to that.

The Court: Objection overruled.

The Witness: After that I had an accident of my own with the government automobile and because of that, there was some charge and I had to appear before some coroner's inquest. And Mr. Glasser volunteered to assist me by going over and acting as my lawyer without pay. I was not unfriendly then. I am not unfriendly now.

Redirect Examination by Mr. Ward.

I never told Mr. Stewart I was unfriendly to Mr. Glasser. When I went before the United States Commissioner—when I was before the Commissioner I had this search warrant of the Lewandowski case. I said I did have a search warrant. Mr. Glasser knew I had the search warrant, he knew all about that. He did not bring out anything about this case before the Commissioner.

Recross Examination by Mr. Stewart.

We were not trying that case.

Redirect Examination by Mr. Ward.

When I was immediately in front of the premises at 124 just a little to the east, I got the odor of alcohol, a slight odor, and from my experience as an investigator I was able to tell what that odor was. I had a general idea where it was coming from. From the rear of 124. I don't recall that I told that to the Commissioner.

The Court: Q. Was that odor coming from a still?

A. Yes, sir.

Mr. Stewart: Well, did any one before the Commissioner prevent you from telling anything you knew about your search?

A. No, sir.

487

Redirect Examination by Mr. Ward.

I was put on the witness stand and asked questions. I answered the questions I was asked. Before I leave the stand, when the Government gets through asking those questions, I am cross-examined.

Recross Examination by Mr. Stewart.

The Commissioner asked me to state the circumstances of the search and I told him all about it.

Mr. Ward: Did you tell about 128 as being in close proximity to 124?

A. No, sir.

Redirect Examination by Mr. Ward (Resumed).

I told the commissioner about having your Wroblewski, and catching him in this place, and taking him over to his mother. I don't recall if there was anything asked as to why he was in that place.

(Witness excused.)

JAMES W. LAVELLY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is James W. Lavelly, Joliet, Illinois, investigator, Alcohol Tax Unit, for eleven years. I have been stationed here at Chicago since the spring of 1937, I know the defendant Mr. Glasser. I was present at this Peter Hodorowicz, Clem Dowiat still in September 1937 when this arrest took place. I was with agent Rossner at that time.

Mr. Stewart: I will offer to stipulate, if Mr. Ward states that it is the fact this gentleman's testimony will be the same as the other agent, to save time. Is that agreeable to you?

Mr. Ward: Well, that is practically enough to warrant.

The Court: It may be so stipulated that the testimony would correspond identically with the last witness.

The Witness: In my contacts with the District Attorney's office I have had occasion to meet Mr. Glasser from time to time. That is in the handling of alcohol tax cases.

(Witness excused.)

EDWARD B. LANE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Edward B. Lane, investigator, alcohol tax unit, now stationed at Joliet. I have been so employed for six years. I was with Mr. Rossner when this search was made of the premises at 124 E. 118th Place in September, 1937.

Mr. Stewart: I will also make the same offer, Your Honor. merely to save time.

The Witness: I was stationed in front of the building when the search was going on, my observation and my knowledge of the facts there would be pretty much the same as Mr. Rossner and Mr. Lavelly.

Mr. Ward: All right, the Government will accept the stipulation.

(Witness excused.)

489 EDWIN K. WALKER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is Edwin K. Walker, I hold an official position. My official position is United States Commissioner of the Northern District of Illinois. I have a court-room and an office in this building.

The powers and duties of the United States Commissioner as relate to criminal proceedings is, he has authority to take complaints and issue warrants, and have hearings, preliminary examinations. That is inquiries as to whether or not there is probable cause or sufficient cause to justify the holding of persons charged with violations of the laws of the United States, and detain them until further proceedings of the United States Court, Grand Jury, or otherwise, may have taken place. That is as to criminal proceedings. In those proceedings, the United States Commissioner has jurisdiction to examine into the validity of raids and seizures of property sought to be

used as evidence by the Government, and that procedure is usually brought about by a petition on the part of the person charged to suppress or exclude the evidence. Sometimes it is heard on a written motion, but most generally in my tribunal is heard on a written petition.

That in a general way, describes, I think, the nature and character of the proceedings. If there are any other details you wish to inquire into—. I was appointed in July, 1928 and have been reappointed twice since that time. I was appointed by the Judges of this District. There is provided by the United States Government in this building a room known as the United States Commissioner Room. It is on the eighth floor of this building. And in conjunction with the discharge of my duties, 490 as United States Commissioner, I have in my employ certain clerical help. Their salary is paid by myself. My office is a fee office, and I bear all the expense of the office. I keep records because I hold a fee office, and I must keep the exact record of everything which occurs. My hearings, and swearing of witnesses, etc.

In the discharge of my duties as United States Commissioner from time to time I have coming before me various representatives of the Government, for example, agents of the Security Service, Postal Inspectors, Federal Bureau of Investigation men, and men from the Alcohol Tax Unit. And from time to time it is necessary for me to issue complaints and order warrants for the arrest of people that are complained against by violating the Federal Statutes, and to fix bonds, and pass upon bonds. When a man is arrested and brought in before me it is necessary for me to fix his bail. I generally ask for a recommendation or statement, from the Assistant United States Attorney as to bond, knowledge they have about the person charged, and so forth. I fix the bail and make the decision, myself, after I have gotten such information as I think enlightens me, to do it justly, and correctly.

It sometimes occurs that an Assistant United States Attorney has in his possession facts which may warrant my making the bail higher than it usually is.

As Commissioner I become acquainted with the various Assistant United States Attorneys. I know Daniel Glasser. I know Mr. Kretske. I know Alfred E. Roth and Anthony Horton. In the past three or four years I have seen them in my Commissioner's Room at pending hear-

ings. If there is sufficient evidence before me that there is probable cause I usually hold that person to the District Court to await the action of the Grand Jury. 491 The next step, if the District Attorney concludes to go on with the prosecution, if there is sufficient fact it is a misdemeanor, I presume, present the matter to the Grand Jury to seek an indictment, or if a misdemeanor he may file an information. He probably can't file an information merely because it is a misdemeanor. There are some misdemeanors, the Congress punish by more than a year in prison. My observation is, informations are not invoked, very often, except in a class of cases that may be only quasi-criminal, where punishment is less than a year.

In carrying on of the business of my office I keep records, I keep a docket, known as the Commissioner's docket. That docket has entries in it such as the name of the defendant, the name of the agent, appearing for the respective agency, of the United States, the name of the Assistant United States Attorney, appearing for the Government, and also the amount of bail that I fix in the case, and the disposition that I make of the case.

After holding a man to the District Court to await the action of the Grand Jury if an indictment is secured, I do not make any record of that in my Commissioner's docket. The D. C. number does not appear after that in my docket. I make out what are known as Commissioner's Reports. I file a transcript of the proceedings together with the original documents with the Clerk of the Court in all cases where the defendants are held. My docket remains in my possession. And in my procedure on the envelope of each case, I have a memorandum in my own handwriting of my orders and so forth, and my findings and the names of the witnesses who have testified. What the United States Attorney does is not within my province. I know it to be a fact that the United States Attorney is permitted to present evidence to the Grand Jury of any number of cases that he might have against the particular individual, regardless of a single charge that is made before me.

492 The first procedure I go through in a case is to designate the arraignment of the person. I either read the complaint or state in substantial substance, and call for a plea. I usually ask the defendant if he is represented by counsel and if he is not, as a general rule,

I sort of explain to him, the charge so that he will be advised of his rights. I then ask him if he intends to employ counsel, and if he says yes, I usually set the hearing for a day subsequent. And if he says he is ready to proceed without counsel, I go ahead. I swear the witnesses and hear the facts. I make a memorandum of the plea, and usually make a memorandum as to whether or not he is represented by counsel. If he is not represented by counsel, I sometimes, don't make a memorandum, and go ahead, but where counsel appears, I usually make a memorandum of who appears for him. I employ the use of numbers in keeping my records, each case has a distinct number, and that is stamped on my files. I keep the complaint until such time as it is filed with the transcript in the Clerk's Office, a copy of the complaint I keep in my file, in a manila envelope, in which I have the number on it and the type of case, and which I use to make this memorandum, and I make it simultaneously with what happens. As soon as the witness gets on the stand, I take my pen and start to write his name, so that what is written on there is a notation that occurs right at the particular time I am writing it.

I have on my knee several files, they have notations on them I made personally regarding certain cases before me. Here is a memorandum of the files I was asked to bring down here, if that is of any service.

493 The file I am now examining is my docket number 19574, being the case of United States *vs.* Peter Hodorowicz and Clem Dowiat. I heard the evidence in that case. On September 23rd, 1937 the day of the hearing there appeared for the Government, Mr. Daniel Glasser, Assistant United States Attorney, Mr. Henry Balaban, appeared for the defendants. There were four hearings. The testimony was heard on September 23rd, 1937, upon a petition to suppress and exclude certain evidence. There were witnesses who testified that day and the case was then postponed until September 24th, on which day there was no testimony taken, there was probably argument upon the petition to suppress, and we did not make the finding on September 24th, the next day. I regard those two days as the hearing.

Strictly speaking, the fact that I regard them as hearings does not necessarily mean that I heard witnesses, I may have heard an argument. I am not sure about this. September 2nd the complaint was sworn to and warrant

issued. On that same day, defendants were brought before me, arraignment day, and were arraigned and pleaded not guilty, and the defendants announced they were not ready to proceed. No attorney appearing for them on that date, the hearing was postponed to September 9th.

On September 9th the case was called and the parties were in court, and on agreement, the case was postponed for hearing until September 13th, at 10:00 A. M.

On September 13th the case was again called, and on that day, by motion of the Government, the case was postponed to September 23rd at 10:00 A. M.

On the 23rd I had a hearing. I heard testimony on the petition to suppress and exclude the evidence.

494 On the 23rd of September the representatives of the Government and of the defendants said whatever they had to say, whether they had anything else to say I don't know. That particular case does not stand out in my mind or memory at this time. The next day the 24th is when I decided it. My finding was that the petition to suppress should be allowed, and I entered an order allowing the petition to suppress the evidence. Unless my recollection is refreshed, by looking at the search warrant, upon which this case appears to be founded, I cannot remember the testimony, I don't recall some names particularly.

I don't have any independent recollection from an inspection of this record what the testimony was (document marked Exhibit #58).

Exhibit #59 is another one of my files; #19572. This file includes the records and procedure for search warrants, and includes the affidavit and prayer for a search warrant, and warrant issued by me, based on the affidavit, and prayer, and the complaint for search warrant and the return on the warrant signed by the officer who executed the same, which return was made on September 4th, 1937. I have no recollection whether I heard anything about this case in conjunction with the last mentioned case.

From my memorandum in my own handwriting, I recall that Henry Balaban appeared for the defendants in the case Exhibit #58.

Q. Are you able to state whether that is the same Henry Balaban that sits here in this case?

A. Yes that is the same Henry Balaban.

495 The Witness: Exhibit #61 bears my docket #19076, it is a case in which the defendant had in his possession some fifty gallons of alcohol, the containers of which did not have affixed the revenue stamps. Mr. Kretske appeared for the Government, he is here in the courtroom. William Boddie appeared for the defendant, he is sometimes called Captain Boddie. In that case the defendant Hodorowicz was held to await further action by the prosecution.

Your Exhibit #60 is the case in which one Walter Hort was charged with the same offense I mentioned in the other. I understand there were two cases growing out of the same violation. There seemed at the time to have been separate complaints filed for some reason or other, but they involved the same transaction. That is my recollection of it.

My docket number 19087 is your Exhibit #62. That is a case in which a complaint was sworn to on January 28th, 1937, charging one Walter Hort with having in his possession some 340 gallons of alcohol, the empty containers and so forth. The defendant was brought before me on that date by the Marshal and Mr. Kretske appeared for the United States, and William Boddie appeared for the defendants. My file shows there was a petition to suppress there and the defendant was discharged. I heard that on that day. Exhibit #63 which is my number 19427 shows the defendant Dowiat was held to the District Court to await the action of the Grand Jury. On July 9th the hearing on that day was pursuant to a continuance from June 30th, and on that day the defendant waived examination. No testimony was heard, and I entered an order holding the defendant.

When bail was fixed or bond taken, a memorandum was made on the file. Sometime that was done when the bond was actually entered by my clerk. On Exhibit #61 496 my file tells me a surety appeared in that case and put up bail for the defendant, but the memorandum in that circumstance is in the handwriting of my clerk, but I am familiar with it.

Louise Hodorowicz was accepted there as bail in that case, her address in 11823 Michigan Avenue, Chicago, Ill.

The case of Anthony Hodorowicz, Clem Dowiat. On January 3rd a complaint was filed and warrant issued by me, no, the warrant was not issued in that case. This case was brought in without a warrant by agent Edward

T. Newell. All these cases are alcohol violation cases. And the case I am now speaking of is an alcohol tax violation case. The defendant was arraigned and pleaded not guilty and hearing was set for January 26th. On that day Mr. Glasser appeared for the Government, and for the defendants, A. E. Roth. The same Roth as is sitting here. On January 26th it was a continuance on motion of the Government to February 16th at 2:00 P. M.

On February 16th the parties appeared. It is not shown who made the motion. The defendants were discharged and a memorandum is made here that the reason for the discharge is that the defendant had been indicted and an indictment returned, which terminated my jurisdiction. In the first case, the defendants were Hodorowicz and Dowiat. That case was dismissed before me on February 16th, 1938 on motion of the Government. I was advised by the Government that the reason for the dismissal was that an indictment had been returned and warrant issued. I don't know if indictments were returned against both defendants. When the Government makes a motion to dismiss I sometimes ask the reason for it, and where pending a continuance there has been an indictment returned, it is through with me.

497 The assistant comes in and makes that representation and I take his word for it and put it in my file. Exhibit #65 is the case of Carl Swanson, the complaint was filed on January 23rd, 1938. The defendant was brought in before me on January 5th, 1938. The defendant was not ready for hearing and it was continued to January 26th, 1938 at 2:00 P. M.

On January 26th the case was called and there appeared Mr. Glasser for the United States, and A. E. Roth for the defendant, motion of the Government postponed to February 16th.

On February 16th on motion of the Government the defendants were discharged. My memorandum shows that in that case the indictment had been entered and bench warrants issued.

Government's exhibit #64 is my file envelope, that was a case in which complaint was filed before me on August 26th, 1938. The defendant was brought before me by C. P. Rossner, one of the inspectors of the alcohol tax unit, the defendants said they were not ready for hearing, case was continued to August 31st, bail was fixed at \$2500.00. The record does not show who appeared for the Govern-

ment that day. That is the case of *United States vs. Walter Kwiatowski*. On August 31st by agreement it was postponed to September 12th. On September 12th my memorandum shows that I held a hearing, and in that hearing, Daniel Glasser appeared for the United States, and Henry Balaban for the defendant. That was an alcohol case charging removing and charging making mash and operating a still, without having given bond. I heard testimony of the witnesses Rossner and McElroy, agents of the alcohol tax unit. I note my memorandum show that McElroy was present but did not testify. After the hearing the case was postponed to September 14th, and on that day I entered a finding, the finding being probable cause not shown and defendant discharged.

498 My recollection is that I took the case under advisement, probably for a day or two and then entered the order on the evidence. Undoubtedly what I meant was that on the evidence offered I based my decision.

Q. It does not mean that there may not be probable cause but that it was not shown to you?

A. If there was anything not presented to me,—I make my finding on the evidence presented to me.

Q. I just want to clear up what your memorandum means there?

A. Yes, sir.

The Witness: I fixed the bail and the original amount was \$2560.00. Bond was taken and approved, and the surety on that bond was Edward F. Ryan. Mr. Ryan is a man who occasionally made bail for defendants, who were charged with violations a few times. I think Mr. Horton probably procured him some times. It seems to me that he has been offered by others that procure bail there. I am not sure about that. I have no distinct recollection and I might not have known. In any event, I know that Edward F. Ryan has frequently been surety on bond where Mr. Horton the defendant here was interested. For a number of years Horton was actually in the building securing sureties and writing bonds. Some times the bonds furnished by Mr. Horton were signed by a bonding company but generally by individuals. I know that it was and is the practice where certain persons secure other persons to go bond for people, to put up their real estate. Mr. Horton was engaged in that kind of work a number of years. There have been several occasions where he put up cash.

Exhibit #67 is the case of Emil H. Beisner, Edward Farber, George Neiss and Adam Widzes.

499 It was an alcohol case which involved a charge of 17,000 gallons of mash and the operation of a distillery without having given bond, and the possession of 2 gallons of untaxed alcohol. On November 19th the defendants being brought before me by Charles O. Crowell, and investigator of the Alcohol Tax Unit, Daniel Glasser appeared for the United States, A. L. Maravitz for one defendant and A. H. Cohen for another defendant, the defendants said they were not ready for a hearing and a continuance was given to November 24th.

On November 24th I have a memorandum that District Attorney Glasser came before me and made a motion to reduce the bond as follows: Widzes, Niess, Farber and Beissner bonds being reduced to \$2000.00, the original bond fixed was \$3000.00. On November 22nd bonds were taken for Beisner and Niess. On November 24th the day the case was continued, on motion of the defendants, the hearing was continued until December 2nd. Mr. Glasser represented the Government there. On December 2nd the case was continued to December 8th and on that day I have a memorandum showing that on the application of the Government, certain subpoenas were issued for witnesses for the hearing on December 9th. There was some change in the defendants representatives. A. L. Maravitz was still in the case, but H. P. Passman appeared for Niess. I don't know what happened to Mr. Cohen. Mr. Cohen represented somebody, he may have been appearing for Mr. Cohen's office, this Passman. On December 9th we had a hearing. H. L. Passman represented Niess and several witnesses were heard. R. H. Kinlock, Charles Kral, Walter Binge from Staiger, Illinois, Albert Droegmiller and J. C. Raymond. On that day I made a finding that probable cause was established, and held the defendants to the District Court.

500 Bonds were taken for appearing before the District Court, when and if required to appear.

I also handle removal cases (here Commissioner explained what a removal case is, the procedure therein, the assistant district attorney's duties, and the commissioner's action).

Government Exhibit #68 being the case of United States vs. one Stanley Slesuraites, alias Stanley Slesur, and Chester and some other alias', Ralph Sharp, alias Ralph

Hoppe, complaint was filed on December 21st and warrant issued. It was a removal case to the Montana district. The complaint before me alleging, showing and return of indictment there, the defendant was brought before me on February 10th, 1937, the case was continued to February 16th and on that day Assistant District Attorney Drymalski appeared for the Government, and on motion of the Government the cause was dismissed. That is accompanied by my note explanatory. The defendant was under indictment here, meaning at this district, and on May 5th the warrant for two defendants were returned to me, unexecuted. I have no independent recollections of the facts in that case, except my general recollection as to defendant Sharp, who was dismissed. Vaguely my recollection is that they wanted to try him here on the indictment here. I don't know who wanted to try it here, Mr. Drymalski appeared for the Government in that case, and at that time he was generally handling the removals. I have no recollection more than that. I say that Mr. Drymalski generally handled removals because it seemed to have been the practice of the District Attorney's office to assign certain ones of the assistants different types of cases, and generally removals would come before me handled by one of the District Attorneys, and prosecutions here of offenses in this district would be handled by one of the district attorneys, some times Mr. Glasser and

Mr. Kretske for the alcohol cases, Miss Bailey, the 501 narcotic cases, and some one of the other district attorneys in counterfeiting cases. Some times one of the others would be engaged and some one else would come in on that attorney's case, and some times on a removal case. I have a certified copy of the indictment pending against Sharp in the demanding district. The indictment was returned in the district of Montana, at Billings. It charges violation of the revenue law, relating to distribution and transportation of illicit alcohol. My memorandum shows that Sharp was admitted to bail on February 13th, a real estate bond was taken. The memorandum does not indicate the surety. My file shows the surety was Edward F. Ryan. I think that is the same Ryan I spoke about a moment ago, I am quite sure.

Cross-Examination by Mr. Stewart.

Before I was appointed Commissioner, I was a Judge of a court of record here in Chicago, and I have had considerable experience as a Judge and as a Commissioner. I was working under the Constitution and Laws of the United States and also rules of court, and more or less under the supervision of our local district Judges. Occasionally I would consult with Judges as to matters of policy before me. I have known Mr. Horton to be around the building and acting in the manner in which I have described six or seven years anyway. (Here the Commissioner described the justification of a surety and how it is first submitted to the District Attorney or one of his assistants for check on the question of whether the surety is worth what he claims to be worth.)

So with that check and my knowledge and experience, I felt satisfied each time I approved a bond whether Mr. Horton was the broker or any one else, that the payment was good and sufficient surety. Generally it is true that all the time I have been thrown in contact with Mr. 502 Horton in these alcohol cases particularly these people who offer themselves as surety, the defendants did in fact appear. In other words if the defendants gave bond, in which case Mr. Horton was acting, they could be relied on to appear in answer to whatever happened before me. I think there might have been one or two instances, but not before me. I don't recall that with any preliminary bond. There was a forfeiture, but whether it was in some district court, I would not know. I don't know of any supply by Mr. Horton where the defendants forfeited in an alcohol case. I don't know of any case in which Mr. Horton offered me what is generally termed 'straw bail', where the surety was not sufficient. As far as I was able to observe, the conduct of Mr. Horton and of his business, in my presence, was proper.

The practice before me includes motions to suppress evidence in these alcohol cases, and the ultimate decision on that motion involves a question of law and facts, and I gave them my best, honest judgment. Generally the agents are there before me on those motions when the ultimate hearing is had. If one happens to be absent, whatever he knows can be supplied by others. On a hearing on a motion to suppress I, as a matter of fact, very

often ask questions of the agents in order to arrive at the finding. It is my purpose to give them full opportunity in determining the facts, and then I hear anybody else who may have something to offer in regard to facts concerning this search and seizure if that person's testimony is competent and admissible, I follow the rules of evidence.

In those cases where I decide to sustain a motion to suppress, that is because I, as Commissioner, use my knowledge of the law, and my judgment of the facts, 503 and come to the ultimate conclusion that it was not a legal search and that evidence should not be used against this defendant under the constitution and laws of the United States.

I never observed anything that Mr. Glasser did, that led me to the conclusion, that in all the cases he appeared before me, where he represented the Government, did I ever observe anything he did, that indicated to me, that he was doing anything but conscientiously serving the Government as District Attorney.

Q. And these cases that you speak of, which you have identified here, and have given us from your docket, the ultimate results, that result is what was brought about honestly, as far as you know?

Mr. Ward: Will you read that question?

(Question read, as requested.)

Mr. Ward: I object to that, Your Honor.

The Court: Objection sustained.

The Witness: I have had considerable experience, it ran into thousands of alcohol cases. By hearing these agents and these various cases, I have obtained a considerable knowledge of the facts surrounding these cases, stills, how they are operated and how they are built, and various things about them. Each time I conduct one of these preliminary hearings, I give the Government and the parties involved, the benefit of my best judgment, on law and on facts.

If you ask me the same questions with reference to Mr. Kretzke, I don't know any case in which he did not give the Government his conscientious service before me. And if you ask me the same about the other district attorneys, my answers would be the same. I always found that district attorneys, apparently before me, were acting conscientiously.

504 The Court: Of course all you observe was their conduct in your courtroom?

A. Oh yes, surely.

The Witness: If the district attorney came in and told me an indictment had already been returned, that is the end of my jurisdiction, I automatically discharge the defendants. My experience with the district attorney has been that I can rely on their word with reference to that. And from my experience with Mr. Glasser and with Mr. Kretske, I had that feeling. There is presumed to be records here in the building as to whether or not an indictment was returned.

Exhibit #65 and Exhibit #66 which goes with it, indicates a still on 6949 Stony Island. Well, it is true, that an indictment was returned without my having a hearing. I don't want to be technical in my answer, but there was a continuance there from January 5 to February 26, for the hearing; and on that occasion, I suppose if I had denied the motion of the Government for continuance, I could have forced them to a hearing, if they had their witnesses.

When you use the word "opportunity", as far as the offer of witnesses before me, there were not. I granted the motion to continue at least on January 29th.

Q. Well, I am just trying to find out if you happen to have a recollection of that particular case, because if you haven't, just say so and we will have to go by what we have. Is it not a fact that the Government asked for a continuance and that Mr. Roth opposed it because he stated to you the fear that if he did not have his hearing, the Government would take their witnesses directly before the Grand Jury?

505 A. Yes, that is substantially the fact. I don't recall just what he said with reference to his fear that they would take the case before the Grand Jury. There was something in that line of talk charged by him in opposing the motion for a continuance.

Q. And Mr. Glasser was there representing the Government?

A. Yes.

Q. And asking for a continuance?

A. Yes.

Q. And these two gentlemen were opposing each other?

A. Yes.

Q. And you decided in favor of the Government and Mr. Glasser was given a continuance?

A. Yes.

Q. That was done over the objection of Mr. Roth?

A. Yes.

Q. He was quite vigorous in his objection, wasn't he?

A. Yes, Mr. Roth was a type of lawyer that was always more or less vigorous, but not in any offensive way. He was vigorous and was certainly very earnest in opposing a continuance.

(Witness withdrawn.)

FRANK HODOROWICZ, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Frank Hodorowicz, I live at 11823 South Michigan Avenue, for twelve years, I have three daughters. I know the defendant Alfred Roth, Norton I. Kretske, Daniel Glasser and Anthony Horton. I have known them for about three years.

506 I have three brothers, Pete, Tony and Mike. I am the oldest of the four. I have a nephew by the name of Clem Dowiat. I live in Roseland for thirty-seven years, it starts at 95th Street. I have known Walter Hort nine years. I know a person by the name of Albina Zarrattini, I just don't recollect her address right now, she lives in Riverdale, she comes to my store, quite often. I do not recall seeing her at my store at 11823 Michigan in April of 1937.

I have been operating the hardware store eighteen years, I was arrested for violating the alcohol tax laws. In 1939 I was convicted in the district court here and sentenced to a year and a day. My nephew Clem Dowiat and Mike and Pete got nine months. I appealed my case to the Circuit Court of Appeals, they affirmed the judgment and subsequent to that I made application for probation. That is pending now in the courthouse here before Judge Woodward.

I knew Albina Zarrattini was arrested in April of 1937. I guess she came to my store after she was arrested, and we had a conversation.

Q. Now after this conversation with Albina Zarrattini, did you see Norton I. Kretske at any place?

A. I guess I did.

Q. Did you have a conversation with Kretske about Albina Zarrattini's case?

A. I guess I did.

Q. Where did that conversation take place?

A. I don't remember.

Q. Do you recall what you said to Kretske, and what he said to you?

A. No, sir.

Q. Do you recall anything about it at all?

A. No, sir.

507 Q. And do you recall anything—not a thing?

A. No, sir.

Q. You don't recall what you went there for?

A. I didn't go there particularly for her case.

The Court: What did you go there for?

A. Well, I don't know. I don't know where—I met him there. I don't know if I was talking about the case, or if I was down there for that particular idea.

Mr. Ward: Q. What was that?

A. I wasn't down there just particularly about that.

Q. What were you down there for?

A. I don't remember.

Q. You haven't any idea, at all?

A. No, sir.

Q. No recollection of it at all?

A. No, sir.

The Witness: I did not have any recollection of it many weeks ago. I did not have any recollection of it a month ago.

My brother Peter Hodorowicz and my nephew Clem Dowiat were arrested too. I recall their being arrested in 1937. They were arrested about a still on 118th Place. I have a distinct recollection of that. The same day I heard they were arrested for a still on 118th Place.

Q. And Frank, after you heard that, did you see Kretske?

A. Yes, sir.

The Witness: I saw Kretske at the Tribune Building, 7 S. Dearborn Street. I had a conversation with him

about the case. It was some time in the afternoon, and I asked him what they could do about the case. I asked him what he could about the case. I asked Kretske. He said, "We will have to see what I can do about the case".

508 I talked to him fifteen or twenty minutes. No one else was present. I just said "Can he take care of the case" and he said "I will have to look into it first" and he said come back in a few days, I will let you know. And I come back in a few days. He says yes, I can take care of the case, but he says "We will have to do it in a hurry". If Pete takes the ownership of the still, we will have it discharged from the Commissioner.

The Court: Q. He said if Pete took ownership of the still, you could have the case discharged?

The Witness: He said it costs \$800.00, so that night I come over and we went to the north side some place. He said he had to deliver the money to Red, so we went down to the north side and he went in some lobby there and I went out to the corner to a saloon. He came back. He said, "everything is O. K." He said "Everything is taken care of for tomorrow morning".

The Court: Had you paid the money before you came back?

A. Yes, sir.

The Witness: The next morning Pete and Clem Dowiat were discharged, that was the evening of September 23rd.

The Court: Do you know—

A. Yes, sir.

Q. —who he meant when he referred to Red?

A. Glasser.

Q. The defendant in this case?

A. Yes, sir.

Q. You actually gave Kretske \$800.00?

A. Yes.

Q. How did you pay it, in currency?

A. Yes, in cash.

509 *Direct Examination (Resumed) by Mr. Ward.*

I know Elmer Swanson, and Christ Del Rocco. I know they were more or less operating a few stills out on the south side during 1936 and 1937. They got in trouble over at 6949 Stony Island Avenue, a still, about December 31st, 1937, and they talked to me about it. My brother Anthony Hodorowicz was involved in that.

Q. Did you talk to Kretske about that case?

A. Yes, sir.

The Witness: That conversation with Kretske I think took place over to the store, my store, there was Del Rocco, I mean the Swede, myself and Clem Dowiat, and I think Tony was there. And then I asked him what he could do about the case. One of us asked that, I don't remember just exactly.

Q. When you say Tony, do you mean Tony Horton?

A. No, Tony, my brother.

Q. Was Tony Horton there?

A. I don't remember.

Q. If he was, you don't recall?

A. That is it.

The Witness: We talked back and forth, we wanted to take care of the case, the first thing we asked him, what can he do about the case, he says he could take care of the case for \$1200.00. So the boys agreed. They gave him \$500.00 of it and they told him when they get all through, they will give him the other \$700.00. They talked back and forth, I don't just remember what was said at that time. I know Swanson asked about probation, something like that, or a fine. He says "It won't cost you no more on that. You won't get a jail sentence".

510 The Court: Q. Did he tell you how he was going to take care of that?

A. No.

Direct Examination (Resumed) by Mr. Ward.

The Witness: I gave Kretske \$500.00. I got it from Patsy and Swede, that same morning. I knew the night before that Kretske was coming out to my hardware store. I got in touch with him. We got in touch with him. I did, or one of the boys. I don't remember. I had his business card, I have it with me now (reading) Norton I. Kretske. I have had this card in my possession three years. I do not know what "Canal 2160" on the back of this card refers to. That is not my writing. That ain't my writing. I don't know whether that is his phone number or not. I got the card from Kretske, in his office. I don't recall what occasion I had to go there that time when I got the card. My wife's name is Louise Hodorowicz. I guess she put up the bond for Pete's release when he was arrested. I

didn't go to the Commissioner's office with my wife. I guess she did. I must have sent her down there at the time, but I know that my brother Peter was pinched, I sent my wife down at that time. I saw Pete after she came down and signed the bond, and Peter returned home. That was about January 26, 1937, I hired a lawyer for Pete. His name was Captain Boddie, I guess I came down town to employ Boddie. I did not attend the hearing at the Commissioner with Captain Boddie. I did not visit this building at all at that time, it must have been before the case was on before the Commissioner, when I came to see Boddie. I say that because he was pinched in Indiana first. That is we happened to get a lawyer and a bondsman.

I recall my brother Pete getting arrested with Walter Hort. I don't know if that was the day when Louise, 511 my wife, signed the bond. I sent her so many times I don't remember. I sent her about five times. I don't recall the first time I sent her. I don't think this was the first time. Walter Hort told me he was doing a favor, taking a car. He said he was in a saloon down there. He went with Pete. He went in his private car with Pete. They arrested Pete's car. There was no alcohol in that car. That's what he told me. He told me all about the facts of his case. I talked to Pete about it. He told me all about the facts.

Q. Now, after you talked to your brother Peter, did you talk to Kretske about that case?

A. No, sir.

Q. Did you come down to the loop at any time and talk to him about that case?

A. No, sir.

Q. Did you ever have any conversation with reference to that particular case in which an amount of \$800.00 was mentioned?

A. On that particular case?

Q. Yes.

A. On Pete's case?

Q. Yes.

The Court: Speak out so that I may hear you.

The Witness: No, sir.

Mr. Ward: Q. Did you know at that time Kretske was an Assistant United States Attorney?

Mr. Stewart: At what time? I object, your Honor, he says he had no conversation.

Mr. Ward: Q. Just a minute.

The Court: Fix the time.

Mr. Ward: Q. I am going to.

512 Q. Did you know at the time January 12, 1937, that Kretske was an assistant United States Attorney?

A. I didn't know at that time.

Q. Did you know that he was prosecuting your brother Peter, and appeared before the United States Commissioner, at the same time that your wife Louise signed that bond?

A. No, sir.

Q. You didn't know that?

A. No, sir.

The Witness: After the Stony Island Avenue still was seized, I talked to Kretske. They were all talking, I don't remember if I stated all the conversation I had with Kretske about that particular case. Swede, Patsy and myself were all talking.

Q. Do you recall anything being said about the heat?

A. Yes. They said, he said, there was a lot of heat on the case.

The Witness: Kretske said that right in the store. I was indicted in June of 1938 and after I was indicted I had a conversation with Kretske about my case. I came down to see him. He came down to see me. I had notice of his coming. He called me up. Over the phone he says I got something important, I will be over there right away. I says, O. K. so he came over. He said you are in a jam. I said what kind of a jam. He said I don't know exactly, you are going to be indicted. I said I never done nothing. How am I going to get indicted. Oh yes you are going to get indicted, he says. If you give me \$1000.00 you won't get indicted. So that was all until I got indicted. I did not give him the \$1000.00 at that time. He remained in my house about a half an hour. That conversation was on Sunday. That is all I remember at that time. It was about a month before my indictment.

513 After I was indicted, I got in touch with Kretske at his office, I did not come here to the United States courthouse. I had a talk with him in his office. I says what can you do in my case. He says we will look into it, so he looked into it. I came back again three or four days later, or a week. He says there is nothing can be done on your case, there is too much heat on you. He said there was too much heat on my case, speaking to me. I said I

don't see where there is supposed to be some heat. I didn't do nothing. Well, he says, that is what he found out. That is all. There is too much heat. He can't do anything for me. If I did talk to him after that it was about the same thing. It was up at his office. He said there is too much heat, he can't do nothing for me.

Q. What did you want him to do?

Mr. Stewart: I object to that, that is immaterial. If he can't do nothing for him, your Honor, it wouldn't make any difference what this man wanted.

The Court: Objection overruled.

Q. What did you go there to employ him for?

A. I didn't go up there to employ him.

Q. What?

A. I didn't go there to employ him.

Q. What did you go to his office for?

A. To find out if he can take care of my case.

Q. What do you mean by that?

A. To fix it up.

Q. What do you mean by that?

A. Well, to take care that we did not go to jail.

Mr. Ward: Q. Now, do you recall having another conversation with Kretske about your case?

514 Anything mentioned about a report?

A. Yes, there was a report through Glasser's office.

Q. What did he say?

A. They were all indicted on some alcohol. They were going to get indicted on some alcohol.

The Witness: After Kretske told us that he continued. He said he couldn't do nothing in that case. He couldn't do anything in that case.

Q. Did he say there is an awful lot of heat on this case, Frank, we will try all angles. Did he say that?

A. Yes, that is what he said.

The Witness: And subsequent to that he mentioned Bailey's name. Well, he says, "They got Glasser over a barrel, he can't do anything. He has to put you in jail." That is all, because Bailey is from Washington.

(Whereupon at 4:30 o'clock P. M., an adjournment was taken until Wednesday, February 14, 1940, at 10:00 o'clock A. M.)

515 *Direct Examination (Resumed) by Mr. Ward.*

After I was indicted in June of 1938 I saw Mr. Glasser in his office. I had a conversation with him. I talked to him. I went in there and asked him, I says, "I think I am getting a raw deal around here", and he says "Well I can't help it". He says, "You have to go to jail for five years", I says, "For what"? Well, he says, "Bailey says he will get my job if I don't put you away". I don't know what else was said at that time, I was in there two or three times.

He says you could send Mike here, and he said, I will let him read the report. Before that I never sent Mike to see Glasser, after that, I did. I recall about Christmas time 1937 I know there was something sent up to Glasser's just before Christmas of 1937, a case of Scotch was sent there. I sent it up with Mike.

The Court: A case of Scotch whiskey?

A. Yes, sir.

The Witness: I know the defendant Anthony Horton. I saw Horton in this building in the year 1938, when I surrendered for the purpose of making bond in my case, I saw Horton at that time. He was helping me put the bond on. I talked to him. I said "Help me with the bond". The bond on me and my brother Mike. I wanted him to help take care of the papers and see if there was enough bond to schedule. I don't think there was enough at that time. I talked to Horton about it. He said "I will help you out with the bond". No amount was mentioned. At that time I paid him \$50.00 for the work he done. And he took care of the bond and I got out on bond. That was the last case in which I was indicted.

516 I had occasion to go to Glasser's office and talk to

Glasser again. Roth was my lawyer who was representing me in my case for a while after I was indicted. That is Alfred Roth the defendant here. I dispensed with Roth's service at that time. I left him go. A couple of weeks after I put the bond on. That was after I had talked with Glasser. I did have occasion to go back to see Glasser after I released Roth from the case. I had a talk with him. I just asked him about a few lawyers. I don't just remember what lawyers I asked him about two, about two, I talked about Hess.

Mr. Ward: Q. And what Hess is that?

A. Sitting there (indicating).

Q. What did you say to Glasser, and what did he say to you?

A. Well I says, I have to get a good lawyer to defend me, if that is how bad I am in there, in trouble.

Q. What did you go to Glasser for?

Mr. Stewart: I object to that, your Honor. He asked him about the conversation.

Mr. Ward: No, what did you go there for?

Mr. Stewart: I object.

The Court: Objection overruled.

The Witness: A. I was just down there to ask him about the lawyers.

Mr. Ward: Q. Why did you go to Glasser and ask him about it?

The Court: He told you—oh, I see.

The Witness: I just went in there to see what lawyer would be the best.

Mr. Ward: Q. Well, what did Glasser say to you?

517 A. I just don't remember what he said, and how he said.

The Court: What is your best recollection?

A. Well, he says—I mentioned three lawyers, and he said, "Well, any one of them are alright".

Mr. Ward: Q. To refresh your recollection—have you exhausted your recollection now, of what you said there, and of what Glasser said to you?

A. I just talked about the case.

Q. Do you recall Glasser saying anything to you that Mr. Hess could do you a lot of good in that case?

A. Well, I mentioned Hess, and he said, Hess could do a lot of good.

Q. Glasser said that to you?

A. Yes, sir.

Q. Now, have you told us all the conversation you had with Glasser that you remember?

A. Yes, sir.

Q. You can't remember any other?

A. No, sir.

Q. Well, do you recall having a conversation with Glasser in which you said, it looked like you were in a lot of trouble over five cans of alcohol, and Glasser said you know, Frank, I like money, but this time, I can't do anything, do you recall that conversation?

A. Well, he said for all the money in the world you can't do nothing on this case.

Q. Well, did he say what I just asked you?

A. Maybe not just like that.

518 Q. Well, how?

A. He said for all the money in the world he can't do you no good this time.

Q. Now, do you recall in a conversation with Glasser, Glasser talked about Bailey?

A. Yes, he talked about Bailey, Bailey was after him all the time, haunting him all the time about the case.

Q. He told you that?

A. Yes, sir.

Q. Do you recall Glasser saying to you that Bailey was watching the case closely, and he had been in two or three times trying to press this case, do you recall him saying that?

A. Yes, sir.

Q. Do you recall Glasser saying to you if it had been an ordinary case it could be handled differently, but not this case, do you recall that language?

A. In them words, yes, sir.

Q. Now, I will ask you whether or not you knew Albina Zarrattini; I think you said you did, that is right, isn't it?

A. Yes, sir.

Q. And how long, let us say, previous to the first of January, 1939, how long had you known Albina Zarrattini?

A. Oh, I know Albina for about eight or nine years.

Q. And how frequently would you see her, for let us say two or three years previous to 1939?

A. Every couple of weeks, or week.

Q. You held conversations with her from time to time?

A. Yes, sir.

Q. Do you know generally what she was doing, what
519 her business or occupation was?

A. No, sir.

Q. Now, after April. After the month of April, 1937, along about in May, do you recall Albina Zarrattini coming to you and talking to you, and having a conversation with you?

A. Yes, sir.

Q. Do you recall at that time, after talking to Albina Zarrattini, having a conversation with Norton Kretske?

A. Yes, he said she was—

Q. No.

Mr. Stewart: I object.

Mr. Ward: No, not what he said to you,—you had a conversation with Kretske, did you?

A. Yes, sir.

Q. Now, where did that take place?

A. I think in his office—in his office,—or I don't just know where it was.

Q. You are not able to state where it was?

A. No, sir.

Q. Now, what was the conversation you had with Kretske?

A. Well, she had a case, she got caught with two cans or something.

Q. Yes?

A. And she wanted to take care of it, and so I talked to Kretske at that time, and he said, "Well, we might can take care of it. I will let you know later."

Q. And did you re-visit Kretske's office later on?

A. Yes, sir.

Q. After talking with him about that case—

520 A. Yes, sir.

Q. Now, what did he say at that time?

A. Well, he said it will cost us \$600.00.

Q. And what did you say?

A. I said it is all right.

Q. Now, did you see Albina Zarrattini after that?

A. Yes, sir.

Q. And did she give you anything?

A. Yes, sir.

Q. What did she give you?

A. \$600.00.

Q. And what did you do with the \$600.00?

A. I kept it.

Q. Did you then-re-visit Kretske's office?

A. Yes, sir.

Q. And have a talk with him again?

A. Yes, sir.

Q. And what did he say to you, and what did you say to him?

A. He said he couldn't take care of that case.

Q. Did he state any reasons why?

A. She talks too much.

The Court: What?

A. She talks too much.

Q. You talk too much.

A. She talks too much.

Mr. Ward: Q. And did he state how he happened to know or find out why Albina Zarrattini talked too much?

A. She was around the building, and I guess she talked.

Q. Well, did Kretske tell you this?

A. Well, I got it from her, from her.

Q. Now, what did Kretske say about her talking too much?

521 A. Well, she was around the building here—

Mr. Stewart: I object.

Mr. Ward: Q. No, not what she did—what did Kretske say to you, if anything?

A. He said that she was around the building here.

The Court: What building?

A. Federal Building.

Mr. Ward: Q. And have you exhausted your recollection of what Kretske said to you at that time regarding Albina Zarrattini?

The Court: What else did Kretske say about her at that time?

A. He just said she talks too much. I can't handle the case.

Q. Did he say anything else?

A. Not that I remember.

Mr. Ward: Q. Do you recall Kretske mentioning any names that he had talked to?

A. Well, he talked to Red of it.

The Court: You mean Mr. Glasser?

A. Yes, sir.

Mr. Ward: Q. Did he use the word Glasser or Red?

A. I don't recall, Glasser or Red, I don't know.

Q. And did he say to you at that time anything about what Glasser told him?

A. Yes, she went down there to see Glasser.

Q. Yes—

A. And he wanted to give her probation. She said she didn't want either one, probation or fine, or jail.

Q. Now, Kretske is telling you this, is he?

A. Yes, sir.

522 Q. And what else did he say?

A. I don't remember.

Q. Did he say Glasser didn't want to have anything to do with the case since she talks too much? Did Kretske say that to you?

A. In them kind of words I guess, I don't remember.

Q. What did you do with the \$600.00, if anything?

A. I gave it back to her.

Q. Now, in January of 1937 you stated that you recall your brother, Peter Hodorowicz and Walter Hort being arrested, that is right, isn't it?

A. That is right.

Q. And did you talk to them after they were arrested?

A. Yes, sir.

Q. Did you more or less handle the business affairs of your brothers in the way of taking care of certain details?

A. Not unless he got in trouble for it.

Q. Well, that is what I mean, if they got in trouble you were the one to take care of it, were you?

A. Yes, sir.

Q. Did you do anything to take care of their trouble, yes or no to that?

A. Yes, sir.

Q. Did you talk to any person about the Peter Hodorowicz and Walter Hort case, yes or no?

A. Yes, sir.

Q. Do you recall the name of the man you talked to?

A. Captain—

Q. No, not a lawyer, any other person.

A. You mean when they were in Indiana or in Chicago?

Q. I mean after they got back here to Chicago now, and they are going to be up before the United States 523 Commissioner,—did you see anyone about the case other than a lawyer? I am not speaking about a lawyer.

A. I talked to Frank Miller.

Q. And after your had a conversation with Miller, did you give him anything?

A. I asked him what could he do about the case.

Q. All right, that is what you asked him. Now, did you give him anything?

A. Well, he found out, and he said, "I can take care of that for you for that much money", and I said, "Okay".

Q. How much?

A. \$800.00.

Q. Did you pay him?

A. Yes, sir.

Q. You don't know whether Miller used that money or not, do you?

A. No, sir.

Q. All you know is you gave it to him for that purpose?

A. Yes, sir.

The Court: What is that man's name?

A. Miller, Frank Miller.

Q. Frank Miller. And who was he in this?

A. He was in the bootlegging business.

Q. In the bootlegging business?

A. Yes, sir.

Q. He was not a lawyer?

A. No, sir.

Mr. Ward: Q. Now, in the latter part of January, that is around the 27th, do you know or recall Walter Hort getting in trouble again?

A. Yes, sir.

Q. And that was over 68—five gallon cans of 524 alcohol, is that true?

A. Yes, sir.

Q. Did you know at that time that Walter Hort was driving a Packard automobile?

A. Not at that time, after he got arrested I found out.

Q. After he got arrested. And whose Packard automobile was that?

A. It was some Italian's.

Q. Well, did you have any connection with it?

A. No, sir.

Q. What?

A. No, sir.

Q. What was the value of that car approximately at that time?

A. Three or four hundred dollars.

Q. And was that car seized by the Government?

A. Yes, sir.

Q. Did you have a talk with any person about that particular case after Walter Hort was arrested?

A. Talked to Miller again.

Q. Where did you talk to Miller?

A. 835 West 123rd Street.

Q. How did you happen to get acquainted with Miller?

A. Well, that is where they used to hang out.

The Court: A little louder.

A. That is where they used to hang out.

Mr. Ward: Q. And how much did you give Miller in that case?

A. I guess there was \$500.00 given him.

Q. Did anyone introduce you to Miller, or did you meet him accidentally?

A. Oh, I knew him for a long time.

525 Q. You knew him for a long time? Do you recall talking to Kretzke about the Hort case after Kretzke got out of the District Attorney's office? After he got out of the office? Do you remember of ever talking to him about that case?

A. I might have talked to him about the case.

Q. And what, if anything did you say to him about it?

A. Oh, I just told him that case is still pending.

The Court: Let us go back to this Miller, you paid him money twice?

A. Yes, sir, that is right.

Q. And did he accomplish what he agreed to do the first time?

A. Yes, sir.

Q. What was that?

A. Well, he told me that the first case they will drag it along, and that is what they done, and on the second case—

Q. Let us get that first case. Who told you what, he told you what?

A. That he could drag it along.

Q. Did he drag it along?

A. Yes, sir.

Q. Well, did he drag it along?

A. Yes, sir.

Q. What happened to that case?

A. It didn't come up yet.

Q. It has not come up yet? and when was this? When did you pay him that money?

A. About three years ago.

Q. All right. How much did you pay him at that time?

A. \$800.00.

Q. Speak louder.

A. \$800.00.

Q. That is more like it. What did you pay him
526 the second payment?

A. \$500.00.

Q. When was that?

A. Oh, in January, about two or three years ago.

Q. What did you pay that to him for?

A. For that 68 gallons.

Q. To take care of that 68 gallons?

A. Yes, sir.

Q. Because of the United States Government?

A. Yes, sir.

Q. What did he accomplish for you in that case?

A. Got them discharged in front of the Commissioner.

Q. The defendants were discharged?

A. Yes, sir.

Q. Who were the defendants at that time?

A. Walter Hort.

Q. Who were the defendants in the first case?

A. Pete and Walter Hort.

Q. Pete Hodorowicz?

A. Yes, sir.

Q. And Walter—

A. Hort.

Q. They were employes of yours?

A. No, sir.

Q. Did they work with you, partners in the venture?

A. No, sir.

The Court: All right. Go ahead.

Q. Did this Miller tell you at that time how he was going to accomplish the results he attained?

A. Yes, he told me ahead of time.

Q. What did he tell you he was going to do?

A. Well, on the first case, to drag it along.

Q. All right. I know, but how was he going about to work that out?

527 A. I don't know.

Q. He didn't tell you that?

A. No, sir.

Q. He didn't mention any of these defendants at that time?

A. No, sir.

Mr. Ward: Q. Now, did you at any time ever pay any money to Alfred Rothe to represent your brother Anthony, or Dowiat or Swanson?

A. No, sir.

Q. Was Roth ever present at any time when you paid Kretske \$250.00?

A. I don't remember that.

Q. Do you recall—

The Court: What is that?

A. I don't remember that.

Mr. Ward: Q. Do you recall going to see Kretske after you were indicted, and having a conversation with Kretske about looking into your case?

A. I remember that.

Q. At which time Kretske asked you for \$250.00?

A. I guess he did.

Q. And you paid him the \$250.00?

A. Yes, sir.

Q. And Roth was there at that time, was he not?

A. I don't remember that.

Q. Well now, what was said about that \$250.00, what was that for?

A. On what case was that?

Q. That was in your case. That was at the time when they said he would try all angles, does that refresh your recollection?

A. Yes, sir.

528 Q. Well, what was said?

A. Well, they were going to look into the case. Well, they were going to look into the case.

Q. What did you say to him at that time?

A. I said I don't want them to look into the case, I want them to take care of the case.

Q. Now, when your case was called the first time in Court, after you were indicted, do you remember standing up in the court room, and Mr. Glasser being present?

A. In my case?

Q. Yes.

A. Yes, sir.

Q. And you were asked at that time whether you were to plead guilty or not guilty to the indictment, and you entered your plea. I am just fixing the time now for the next question. Was Mr. Roth present at that time?

A. I don't remember. No, I don't think so.

Q. Well, if he was present you don't recall it, is that it?

A. Yes, sir.

Q. And when this case was tried before Judge Woodward, who represented you?

A. Hess.

The Witness: That was a jury trial and that involved a sale or a possession of some untaxpaid spirits that I was supposed to have some part in selling or possessing. That is what they called it, possessing. I recall when I was found guilty and I was sentenced by Judge Woodward. Mr. Glasser was there at that time. I do not recall that the Judge asked for any recommendations in my case, Mr. Glasser didn't mention no sentence. Nothing was said at all. So the Judge sentenced Clem and Mike and Pete to nine months, and gave me a year 529 and a day. Glasser told Judge Woodward about my record or my activities in conjunction with the business out there on the south side. He took a picture and showed him a picture with all the windows closed up. That was the last of the case. He had something to say when the Judge was about to sentence me down there, that the reputation I got, or something like that, some way, for the past, it ain't what I am getting it for, now, it is for the past.

Q. Now, was Bailey there at that time?

A. Not when we were there, when we were sentenced.

Q. Well, he was there all during the trial?

A. At the whole trial, yes, sir. But at the end we got sentenced on a different day.

Q. But Bailey was there at the trial?

A. The whole trial, yes, sir.

Q. And did you see Bailey talking to Glasser throughout this case?

A. There were two or three men talking.

The Witness: He sat at the table like he is sitting there now. After I was convicted and sentenced to a year and a day I appealed my case to the Circuit Court of Appeals.

After I was convicted I went over to the Alcohol Tax Unit and I talked to Mr. Herrick over there. That conversation lasted about an hour. I met Walter Deveraux, special agent of the Federal Bureau of Investigation, after that and Mr. Deveraux talked to me.

The Court: Did anybody send you?

Mr. Ward: I was just going to ask him.

The Court: Go ahead.

Mr. Ward: Did any one tell you to go over to Mr. Herrick and tell him what you did tell him?

Mr. Stewart: I object. That wouldn't make any difference, it is a matter of cross-examination.

The Court: That is the question I wanted to know.
530 I want to find out. Objection overruled. You may answer that.

The Witness: A. Nobody sent me there.

Mr. Ward: Yes, sir.

A. No.

Cross-Examination by Mr. Stewart.

I do not remember hearing of a fire breaking out in a still at 128 West 119th Street. I did not have any interest in that still directly or indirectly. I did not get any of the profits that were made out of operating that still. I did not have anything to do with erecting it or operating it. I did not have any interest in the still at 128 West 119th Street. I did not have any interest in the still at 6949 Stony Island Avenue. Not in any way, never did.

Q. The fact Patsy came in here and testified under oath that you did, that wouldn't refresh your recollection or change your answer?

A. He is lying.

Q. He is lying when he says that?

A. Yes, sir.

Q. And when he says Frank was the boss, he is lying when he says that?

A. Yes, sir.

Q. How many times have you been in Mr. Kretske's office in your life?

A. About ten times.

Q. When was the first time?

A. About September or before September.

Q. Of what year?

A. 1937.

The Witness: He was out of the office, of the District Attorney. I got his card. He knew me before. He knew me, and when I got that card, he knew who I was. I got that card as soon as he got out of the Federal
531 Building and started practicing law. I don't remember where I was when I got that card. I don't remember what month it was when I got that card. It was in the year 1937. I can't tell you whether it was in the early part of summer or fall. And when I got the card I put it in my wallet. And it has been in my wallet ever since. I didn't bring it out here especially. They just called for it, and I had it.

Q. Well, when the agents were questioning you they covered the question of your possession of that card, didn't they? They talked to you about that card down in Mr. Ward's office. Did they talk to you about that card over at the Federal Tax building?

A. No, sir.

Q. Mr. Baileytalked to you about it when he came out to see you?

A. No, sir.

Q. Nobody ever did?

A. No, sir.

Q. So the first time you told anybody you had Mr. Kretske's card was when you pulled it out here and showed it to the Judge and Jury?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. And you didn't tell them you had it ever, did you?

A. No, sir.

The Witness: I don't remember the day when I was on the stand before Judge Woodward as a witness in my own behalf. As a matter of fact, I don't have a good memory for dates.

Q. And Mr. Ward here, all through your examination, kept saying "To refresh your recollection, wasn't it a certain day"—that didn't refresh your recollection at all, did it?

A. I know what happened, and that is the way it was going.

Q. And you took Mr. Ward's word for the date, didn't you?

A. I didn't care what date it was, it happened that way.

532 Q. But you don't have any memory of dates, do you?

A. Not the exact dates, no sir.

Q. When did Mr. Kretske go out to your hardware store?

A. On a Sunday.

Q. Of what year?

A. Before my case.

Q. What year?

A. 1938.

Q. What month?

A. I don't remember.

Q. And anything I would say about refreshing your recollection wouldn't bring it back to your memory, either, would it?

A. I know he was there on a Sunday, that is all I know.

Q. And that is all you will ever know about it, isn't it?

A. Yes, sir.

The Witness: I don't know that my brother Tony, my nephew Clem and Elmer Swanson were arrested concerning this still at 128 West 119th Street. No, sir, I don't know that they were arrested. On 119th Street? I don't know. I don't know anything about that. I know that there was somebody seized concerning the Stony island still, I know that, I know they were arrested. All I had to do with that I just had to go look for my brother, who was missing three days. I called all the stations, and I found out he was arrested. I wasn't in any lawyer's office about that case before I got him out on bond. After I got him out on bond I was not in any lawyer's office. I talked to Kretske about taking care of that case. I talked to him at the store. I paid him some money in the store. I paid it personally. \$500.00 in cash. I don't remember what kind of bills it was. I didn't pay him any other money in that case. We made a deal there.

He made the deal there. \$1200.00. We did not go 533 and pay him the balance. He asked me for it, he asked some of the boys, I don't remember. He never asked me for it. No sir, he never asked me for it in his life and he has never gotten the \$700.00. The case was not thrown out. That is the case where my brother and Tony and Clem were arrested when they were going over near the neighborhood of the still. And they were walking along and a couple of Federal Agents were in working clothes, and they jumped on my brother and my brother put up a resistance. I wasn't there, I heard one of the agents pulled a gun and threatened to shoot him. Not about the shooting though. I know that my brother Tony and Clem and Elmer Swanson after they were arrested were in Mr. Roth's office. Not because he was going to be their lawyer. I didn't see Exhibit #38. I knew that my brother Tony and Clem and Swanson were in Mr. Roth's office. My brother Tony and Clem claim they were walking by looking for a used automobile. I didn't know that until they told me and I knew that when the case came to trial they were going to claim before the Commis-

sioner and before the Judge, that they had no interest in the still. They told me. I knew they were going to claim they were innocent. I do not know as a matter of fact that they were partners in that still. I don't know that to this day. As far as I know my brother Tony was an innocent man. Just walking on by where a still had been raided and Clem was an innocent man, just happened to be in the neighborhood. I don't know nothing about Swanson. I didn't know that when Tony and Clem and Swanson's case came up before the Commissioner, the Government, represented by Mr. Glasser, asked for a continuance. I didn't know that Mr. Roth objected to the continuance. My brother Tony, when he came home from the Commissioner's office, didn't tell me what happened down there. I don't know anything about law. As long as he came back I knew he wasn't in jail. That is all I was interested in, he wouldn't go to jail. He must have said the case was continued.

534 I paid money to fix the case. I paid \$500.00 to fix that case and owed a balance of \$700.00. When my brother came home from the Commissioner's office he said it was continued. That is what he said. He did not say who continued it. He didn't say that his lawyer objected to the continuance.

Q. And did he tell you his lawyer told him that if they could have gotten a hearing there, they could have won before the Commissioner?

A. Well, they were surprised of not getting a hearing.

Q. That is right, they wanted to get a hearing, didn't they?

A. They were surprised they didn't.

The Witness: I don't know that later on they were indicted in the case. I don't know that either.

Q. Didn't you inquire of your brother Tony, whether he was indicted in that case or not?

A. He wouldn't know.

Q. He wouldn't know?

A. No.

The Witness: I knew he plead not guilty. Well, they brung him in court, and he plead not guilty, therefore, he was not guilty. I don't remember the case was set for a hearing on another date. Kretske sent my brother down to see the lawyer. They went down there a couple of times. They were getting ready for trial. I don't remember that they came down here ready for trial, and

they set here all day, and their case was not called. They didn't tell me that. That case is still pending, as far as I know. I know nothing about the record showing the Government had sticken it with leave to reinstate.

535 Q. My brother Pete was arrested at a still at 124 East 118th Place around September sometime, 1937. Clem Dowiat, my nephew, was arrested with him. I don't know if Rossner was one of the agents in that case. I paid some money to fix that case to Kretske the day before the case.

Q. The day before the case was thrown out, that is what you said, wasn't it?

A. Yes, sir.

The Witness: That was \$800.00. That is the trip I made up to the north side. I didn't see Kretske hand that money to anybody, I was not in a position to see. He got out of the car, and I just went to the next corner, to the saloon, to get myself a drink. I didn't tell him I would be in that next corner. I had my car, I did not take it up to the saloon at the next corner. I left my car right in front of the place we stopped. I just took a little walk to the corner. I didn't tell Mr. Kretske I was going to be waiting for him up in the corner saloon, then later on I saw Kretske at the car. The car was still in the same place where Mr. Kretske had gotten out of it.

The first time I told anybody connected with the United States Government about that trip that I made up there on the north side was the last couple of months, I guess. The trip was made in 1937. So from 1937 all through my troubles, I didn't complain about that, or tell anybody connected with the Government until a couple of months ago, the first one I told, connected with the United States Government, was the fellow that took the statement off of me. That is Bailey and Deycaux.

Q. And when you did tell them did somebody connected with the Government take you in a car up North to see if you could find the building for them?

A. Yes, sir.

Q. And did you find the building you were able to identify?

A. No, sir.

536 Q. You couldn't even find the building, could you?

A. No, sir.

Q. Now, don't you know, as a matter of fact, that the Commissioner had heard the evidence concerning that still

at 124 East 118th Street on a petition filed by Mr. Balaban here, the attorney, to suppress the evidence? You know that, because you know that Pete and Clem both signed affidavits saying they were the owners of the premises and still?

A. I told them to say that.

Q. Oh, you told them to say that? And you told them to say that, because you know that was necessary if they were going to claim that their rights were violated under the Constitution as to an illegal search, you knew that, didn't you?

A. No. Kretske told me to tell them that.

The Court: What is that?

A. Kretske told me to tell them that.

Mr. Stewart: When did Kretske tell you to tell them that?

A. After we were coming back home.

Q. After what?

A. After we were coming back from the North side.

Q. But when he had already paid out that \$800.00?

A. Yes, sir.

Q. And on the way back Kretske told you to tell your brother Pete to claim the ownership of the still?

A. Yes, sir.

Q. And the next morning your brother was discharged?

A. Yes, sir.

Q. Don't you know, as a matter of fact, your brother filed an affidavit the day before or after it had been heard by the Commissioner, before you claimed you made the trip out to the North Side, you know that to be a fact, don't you?

A. I don't know.

537 Q. You don't know anything about it?

A. I know it was supposed to be—

Q. Did you think you had the Commissioner fixed?

A. No, sir.

Q. You don't make any such claim, do you?

A. No, sir.

Q. And nobody told you they were fixing the Commissioner, did they?

A. No, sir.

The Witness: As a matter of fact I don't know that the Commissioner heard the testimony on it's merits, and Rossner testified in the case that he knew the Commissioner took that under advisement, and then threw it out.

I don't know that he threw it out on it's merits. You talk too fast. I don't know what the Commissioner done, I know what I told the boys to do, and was done there.

Mr. Ward: What is that?

The Court: He said he don't know what the Commissioner did. He knew what he told the boys to do, and was done. Talk out so they can hear you.

The Witness: I heard the agent testify in my case. Komonocus, a Greek name. He said he arranged with me out in the hardware store to buy some alcohol. He didn't arrange with me, he said he did. He said he wanted it because he came from Indiana Harbor.

I testified in my trial before Judge Woodward under oath. I can't give you the date of when I testified. I cannot give you the month, it was in 1938. I think it was February 2nd and 3rd my case was tried.

Q. Of 1939?

A. Of 1939.

Q. So you are a year off on that, aren't you?

(No response.)

538 Q. Aren't you?

A. Okay.

The Witness: Mr. Glass appeared, representing the Government then, as Mr. Ward is here today, in my trial before Judge Woodward. The jury was in the box and Mr. Glasser put on the Government's witnesses against me. And objections were made, and Mr. Glasser took care of the interests of the Government against me.

Q. And he prosecuted you vigorously, didn't he?

A. No, sir, with lies.

Q. With lies?

A. Yes, sir.

Q. So the agents were lying when they testified they bought alcohol from you?

A. Yes, sir.

The Witness: I knew Glasser a long time before I was indicted on the case before Judge Woodward?

Q. You knew of him.

A. Yes, sir.

Q. But the first time you ever met him or talked to him was when you came down here to make your bond, isn't that right?

A. Yes, sir.

Q. And you had a talk with him on the steps when Mr. Glasser had an agent along with him, that is true?

A. Yes, sir, he was making fun of me.

Q. He said, "So you are the fellow Hodorowicz, the great bootlegger".

A. No, he said, Frank.

Q. He said, "You are Frank, the great bootlegger"?

A. Yes, sir.

Q. And he told you he was going to get you five years?

A. Yes, sir.

Q. And that is the first time he ever spoke to you,
539 or talked to you in your life?

A. I don't know.

Q. Stop and think now. Isn't that a fact, that is the first time Mr. Glasser ever talked to you personally, in your life?

A. How would he know me if it was Frank?

Q. I am asking you if that is not the first time Mr. Glasser ever talked to you?

A. I talked to Glasser before.

Q. Where in the building was he, on the case?

A. Oh no, just talked, that is all, about no case.

Q. How long before you came down to make your bond?

A. Oh maybe two or three months before. After I mean, after I made the bond.

Q. Two or three months after?

A. About three months after I talked to him, I knew Glasser before my case.

Q. Well, I am asking you when you talked to him for the first time in your life?

A. I don't remember.

Q. Well, I am reminding you, the first time was, when you came down here to make your bond?

A. No, sir, that was not the first time.

Q. Well, you tell us when the first time was?

A. I don't remember.

Q. Give us some idea.

A. I haven't any idea.

Q. What did you talk to him about?

A. I don't remember.

The Witness: Exhibit No. 52 has my signature. I don't know anything about it. I just signed it. I don't know anything about it. I don't know what is in it. I don't know what it is.

540 Q. Well, look at it and see what it is.

Mr. Ward: Well, he can't read, if you want to know, the man can't read.

Mr. Stewart: Well, let's see.

Mr. Ward: Can you read, Mr. Hodorowicz?

The Court: Can you read?

A. I can read, but I don't know what it was all about.

Mr. Stewart: You told Mr. Ward those things, to act dumb to him, you know you can read.

Mr. Ward: Pardon me. May I make a statement. I insist this witness can't read.

Mr. Stewart: You are misinformed.

Mr. Ward: I was told this witness couldn't read, and that is how Mike Hodorowicz went to Glasser's office to read that report. I make that statement clear, and I will show that by the testimony.

The Court: Are you able to read and write?

The Witness: I can read, but not good.

Q. What education have you had?

A. Fourth grade.

Q. Where?

A. In the City.

Q. In the City schools here?

A. Yes.

Q. Read the first paragraph there. Read it out loud.

A. "Come now your—"

Q. Can't you read that word?

A. No, sir.

Q. How would you pronounce it? Make the best effort.

A. "Patelme".

Q. "Come now, your Petitioners—" let us go down here to the Paragraph marked 1, the second Paragraph of the page, start reading from here.

541 A. "These defendants were convicted by a jury sentenced by—"

Q. What is that? "These defendants were convicted by a jury and sentenced by this"; what is that?

A. "Horrible Court."

Q. No, "This Honorable Court." No, that is Honorable.

Mr. Stewart: No, he got it right the first time, Judge.

The Court: Horrible Court.

Mr. Stewart: Q. Well, that is what you think it is anyhow, don't you the Court that convicted you, that is what you think, anyhow?

A. No, I think the Prosecutor didn't do right.

Q. Now, you know what I have in my hand, this exhibit, don't you, it is your petition that you filed, asking the Court for probation?

A. Yes, sir.

Q. You know that, don't you?

A. Yes, sir.

Mr. Stewart: Your Honor, in view of the fact we are offering this, may I read it at this time?

The Court: You may.

Mr. Stewart: (Reading, as follows:)

"IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

The United States of America,

vs.

Frank Hodorowicz, Peter Hodorowicz
and Clem Dowiat.

} Case No. 31014.

PETITION FOR PROBATION.

To the Honorable Charles E. Woodward, one of the Judges of said Court:

Come now your Petitioners, Frank Hodorewicz, Peter Hodorowicz, and Clem Dowiat, jointly and severally, 542 and ask this Honorable Court to grant them probation, and in support thereof, state the following:

1. These Defendants were convicted by a jury and sentenced by this Honorable Court on March 20, 1939, for the following terms: Frank Hodorowicz—one year and one day in the penitentiary; Peter Hodorowicz—nine months in a common jail; Clem Dowiat—nine months in a common jail.

Subsequent thereto, Petitioners perfected their appeal to the Circuit Court of Appeals and the judgment of this Court was affirmed on June 13, 1939. Subsequent thereto, Petitioners filed a petition for a writ of certiorari to the Supreme Court, which petition was denied on the ninth day of October, 1939, and the Petitioners are now out on bail.

2. Petitioner Frank Hodorowicz is thirty-seven years of age, married, and the father of three children, aged eleven, nine and five years. He was born in Chicago, Illinois, educated in the Polish Catholic School, his education only extending up to and through the fourth grade. He then did manual labor and later, acquired a hardware store which he now owns and which is located at 11823 South Michigan Avenue, Chicago, Illinois, and he has continuously owned and operated said store since 1921. He likewise owns the building where said store is located, living in the rear. He now carries a stock of approximately Ten Thousand Dollars, (\$10,000.00) and employs several men to help him. The yearly sales of said store approximate Thirty Thousand Dollars (\$30,000.00).

3. The Petitioner Peter Hodorewicz is a brother of Petitioner Frank Hodorowicz, is twenty-five years of age, married, and the father of two children, aged five and one years. He is now employed by the Acme Steel Company as a day laborer, making approximately Five Dollars (\$5.00) a day. He lives in a rented home at 12410 South State Street, Chicago, Illinois, and has no means of support for himself or for his family other than the money which he makes as a day laborer and the bounty of the Petitioner, Frank Hodorowicz.

543 4. Petitioner Clem Dowiat is a nephew of Petitioner Frank Hodorowicz, is nineteen years of age, lives at 36 East 120th Place, and is now employed as a laborer in connection with the building of the Chicago subway. He has no means of support other than what he makes as a day laborer. He has four sisters and brothers, all of whom are without funds, and from time to time, said Dowiat has been and is contributing to their support.

5. Petitioners further state that notwithstanding the evidence introduced at the hearing in the above entitled cause, the Petitioner, Frank Hodorowicz, had no connection with any of the transactions charged other than to refer the prohibition agents to Clem Dowiat and Peter Hodorowicz, who, in fact, were the persons who negotiated and consummated the sale of the liquor in question; that Petitioner Frank Hodorowicz was not engaged in the liquor business in any shape or form at the time of the transactions in question; that the Petitioners, Peter Hodorowicz and Clem Dowiat, at the trial of the above

cause, readily admitted their participation in the acts charged.

6. Petitioner Frank Hodorowicz has been a leader among the Polish people in Roseland, where he lives, and has an excellent standing and reputation in the community, and in the event this Court refers this Petition to the Probation Department, the said Frank Hodorowicz will furnish the said Probation Department with the names of numerous business, civic and church people of outstanding reputation and character who will confirm the fact of Frank Hodorowicz's reputation in the community.

7. Petitioner Frank Hodorowicz, up to the return of the indictment in this cause, had never been in difficulty with the law enforcing agencies of the United States Government, City, County, or State. In connection with this case, and another case, No. 31013, he was forced to carry the financial burden of both cases, and up to date, in connection therewith, has expended the sum of approximately 544 mately Four Thousand Dollars (\$4,000.00). In addition thereto, since the return of this indictment, and particularly since February 1, 1939, he has been forced to devote a great deal of time to this case and thus neglect his hardware business, which has suffered from his absence. Aside from the financial expense which he has incurred and the loss sustained in his business, he has had mental strain from the pendency of this case and his subsequent conviction, and it has been a constant worry not only to him but to members of his family.

8. That, subsequent to the conviction of said Frank Hodorowicz, he has spent considerable time with Government agents, relative to certain other criminal investigations conducted by them and has made time available to them, all of which was done at the request of certain government officials.

9. None of the Petitioners are now engaged in any violation of any federal, state, or local laws, and the Petitioners, Peter Hodorowicz and Clem Dowiat, have not been so engaged since January 1, 1938; that no good to society can be accomplished by the incarceration of any of the Defendants. As to the Petitioner, Frank Hodorowicz, he is the owner of an established business which, in the event of his incarceration, will have to be shut down. As to Clem Dowiat and Peter Hodorowicz, they are now employed as manual laborers.

Wherefore, your Petitioners respectfully pray that this Honorable Court deem fit to grant their petition, jointly and severally, for probation.

Frank Hodorowicz,
Peter Hodorowicz,
Clem Dowiat,
Petitioners.

Joseph A. Struett,
Attorney for Petitioners.

545 State of Illinois, }
County of Cook. } ss.

Frank Hodorowicz, Peter Hodorowicz, and Clem Dowiat, being first duly sworn on oath, depose and say that they have read the above and foregoing Petition by them subscribed, that they know the contents thereof, and that the same is true.

Frank Hodorowicz,
Peter Hodorowicz,
Clem Dowiat.

Subscribed to and sworn before me this 10th day of October, A. D. 1939.

Theodor J. Sololewski, Jr.,
Notary Public.

(Seal)

The Witness: I heard you read that. It is true. I swore that it was true.

Q. And you swore to a statement that you have never been engaged in the illegal alcohol business?

A. No, sir.

Q. And that is your claim, isn't it?

A. Yes, sir.

Q. And that is your claim you are making to Judge Woodward where you have been sentenced?

A. Yes, sir.

Q. And that is your desire to escape that penalty of a year and a day in the penitentiary, isn't it?

A. Yes, sir.

Q. And you are going to do that, if possible, aren't you?

A. If I can, yes.

Q. You are going to help yourself the best you can, aren't you?

A. Yes, sir.

Q. And in your petition you say that you have devoted a lot of time with Federal Agents working on a case, 546 you mean this case that we are trying, don't you?

A. Well, they asked me a lot of questions about a lot of cases.

Q. I mean the thing you have been working for them on is on this case here, isn't it?

A. Well, they asked me questions about this case.

The Witness: I had already taken that case to the Circuit Court of Appeals, which sits above this Court. And they heard it and decided it against me. And then I took legal steps that were necessary, trying to get my case into the United States Supreme Court, and I failed again. And meanwhile what we call a mandate had been held up, and I had furnished a bond in that upper Court work.

Q. Then after you had lost your application in the United States Supreme Court, the next step was for you to go and start doing your time, unless you did something else, isn't that right?

A. Yes, sir.

Q. And you didn't want to go and start doing your time unless you had to, did you?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. So you came in here before Judge Woodward with this petition I have just read, and Mr. Ward was there, wasn't he?

A. I wasn't there.

Mr. Ward: I don't want you to put my name in. What was that?

The Court: And then before Judge Woodward and Mr. Ward was present on that Petition.

Mr. Ward: What was that? Will you read it?

(Question read by the Reporter as above recorded.)

Mr. Ward: Q. "Came in here before Judge Woodward."

Mr. Stewart: In the Court.

547 Mr. Ward: This is Judge Wilkerson's Court.

Mr. Stewart: Well, we are not going to stand on things like that.

Mr. Ward: I will show, and when I get through you can go as far as you like.

Mr. Stewart: Then keep quiet now, please.

Q. And Mr. Ward approved your application, didn't he? When you came in Court and asked for probation, and your petition be filed and continued generally, Mr. Ward approved of that, didn't he?

A. I wasn't in there.

Q. You weren't there, even?

A. No, sir.

Q. Weren't you even there when they came into Court?

A. The lawyer was there.

Q. You didn't even go to Court?

A. I was around here. I didn't go to the court room.

Q. Where were you?

A. I was sitting in the lobby.

Q. Outside the court room?

A. Yes, sir.

Q. So you didn't even come into Court when Judge Woodward was going to be asked to enter your probation petition. You didn't even come in?

A. Yes, sir.

Q. Why was that?

A. I don't know.

Q. Who told you to stay outside?

A. Nobody.

Q. You just did it?

A. I was waiting there.

Q. Do you know that an order was entered, based upon your petition for probation, continuing it generally?

A. I don't know anything about that.

548

Examination by the Court.

The hearing on my application was continued, I do not know for how long.

Cross-Examination by Mr. Stewart (Resumed).

How could I admit that I had an interest in those stills when I did not. If it was the truth I would admit it. I am trying to tell this Court and Jury I was never in the bootlegging business. I am saying the truth when I say I was never a bootlegger. I am not a bootlegger. I haven't no reason for saying I am a bootlegger. I am not.

The Court: I think it has been covered now.

The Witness: I am known in the community and I have a hardware store. I don't have any interest in the alcohol business of this woman, Zarrattini, I was not a partner of hers. I was not in any way furnishing her with protection. I didn't have anything to do with her illegal acts. She came to me to have me fix her case.

Q. Just an honest hardware man, she came to you to fix her case?

A. Yes, sir.

Q. Do you know what happened to her case?

A. She got discharged.

Q. They never had a case against her, you know that, don't you?

A. No, I don't know that.

Q. The case was no good against her?

A. I didn't know that.

Q. You didn't even look into it to find out what they did, did you?

A. No, sir.

Q. All you did—she wanted you to fix it, and you took the money and tried to fix it, and they wouldn't take
549 your money from you, and you took it and gave it back to her, that is right, isn't it?

A. Yes, sir.

Q. Did you ever pay money to fix any agents?

A. No, sir.

Q. And you never paid any money directly or indirectly for that purpose, did you?

A. No, sir.

Q. And you wouldn't either, would you?

A. If I had reason to, I would.

The Court: What is that?

A. If I had reason for it, I would.

Cross-Examination by Mr. Stewart (Resumed).

My brother Pete was arrested out in Indiana. I did not go out there to try to help him at all. They didn't put any bond on him. He got discharged. He was not on no bond, because the case came up the next morning, and he spent that night in jail and when he came up he was discharged. I didn't meet the agents, didn't see them at all. I didn't go out to Indiana at all.

I know Kwiatowski. He was arrested over here in some connection with a still or something. I didn't go over to the bank with him. I didn't go to the bank with Kwiatowski when he got his money. It is not a fact he had \$4500.00 or some such amount in the bank that was paid to me. I didn't touch the money. I was not at the bank at that time with Kwiatowski. I didn't have anything to do with that case, directly or indirectly, with anybody.

I know a man by the name of Joppek. I went to school with him. I know his widow. She did not come to me after her husband's death. She did not claim her husband was killed in one of my stills. She did not tell me that some of the boys working with me stuck her husband

with selling alcohol. And that they killed her husband. He was not found dead in one of the stills

when the still exploded. I know he died, but I don't know how he died. I did not hear about all of these circumstances. There are a lot of stills exploded around town but not a lot with Joppek in them. I heard he died of heart trouble. I don't know about him being in the still when it exploded. Mr. Bailey did not discuss that with you. He asked me if Joppek ever worked for me, I said no.

Q. Now, although you are not a bootlegger, you have had considerable to do with fixing cases over this period of years, haven't you?

A. Yes, sir.

Q. And you know that, because you did it yourself?

A. Yes, sir.

Q. And you have told us here about those different cases, haven't you?

A. Yes, sir.

Q. Now as a witness before Judge Woodward, I am going to ask you if these questions were asked you, and if you made these answers. Mr. Glasser is examining you, and the trial is in 31014, before Judge Woodward, February 2nd and 3rd, 1939. First, he was asking you about your hardware store and the clerks out there, and about Mr. Bailey coming out there. And what was your conversation, and this is your answer:

"Well, Bailey says they are sitting around there."

Q. Special Investigator Bailey?

A. Yes. He says well, Frank, he says, it is time for you to sing. If you tell me everything, he says, you won't get in trouble. I says I didn't get in no trouble. He says

there is so much fixing going on, and he says I can make it easy for you if you will tell me where that fixing is going on. I says I don't know any fixing going on."

Did you make that answer?

A. Yes, sir.

551 The Witness: Glasser didn't ask me before Judge Woodward about fixing. I didn't say about fixing.

Q. Didn't you hear me read the word "fixing"?

Mr. Ward: If your Honor please, I object to this, not only that it is not proper cross, but that the cross-examination in this particular—

Mr. Stewart: I object to Mr. Ward making a speech.

Mr. Ward: Oh, no, you make a long speech.

Mr. Stewart: He is trying to tell the witness what to say now.

The Court: It is unfair, and an improper accusation. Strike it from the record. Make your statement, Mr. Ward.

Mr. Ward: My reason for the objection is that he is reading from a transcript, and in there Glasser is supposed to be asking this witness a question about some fixing.

The Court: No, he is asking him the conversation he had with Mr. Bailey.

Mr. Ward: Now, unless the question incorporates in it sufficient facts in order that it may be the basis of impeachment,—but anything that this witness has said here,—it is not proper, and it is unfair.

The Court: Well, objection overruled. Read that question again. You can read the question and answer.

Mr. Stewart: I will repeat that question, yes.

Mr. Ward: May I make myself clear, your Honor? If the question, and if Glasser was asking that witness about specific acts of fixing which were involved in this case, and under oath he testified thereto a set of facts, it could be made the basis of impeachment here, but that is not the situation here.

The Court: As I understand, it is a question asked which may be in the particular case, on his trial he makes a different statement. Proceed. Ask the question.

Mr. Stewart: I will read a couple of preliminary questions.

552 The Court: I understand if you are going to impeach a witness you must call the attention of the witness to the time and place, and so forth.

Mr. Stewart: Here is the question. "Well, Bailey says they are sitting around there. It is part of your answer. Special Investigator Bailey, Mr. Glasser says. A. Yes." Now, this is all the answer of the witness I am reading now.

The Court: I understand.

Mr. Stewart: "He says yes. He says, Well, Frank, he says, it is time for you to sing. If you tell me everything, he says, you won't get in trouble. I said I didn't get in no trouble. He says there is so much fixing going on, and he says I can make it easy for you if you tell me where that fixing is going on. I says I don't know any fixing going on." Your answer. You made that answer, didn't you?

A. Yes. (Witness nods.)

Q. And was that answer true?

A. No, I talked to Glasser.

Q. Wait a second. Was your answer true?

Mr. Ward: Just a minute. The witness wants to explain.

Mr. Stewart: He wants to pick up your explanation.

The Court: He may answer.

Mr. Stewart: Was that answer true or false?

A. It was true and false.

Q. Were you making true and false answers before Judge Woodward in your trial?

A. I might have been.

Q. You were telling him anything you thought would help you, weren't you, whether it was true or false?

A. I wouldn't say that.

Q. Well, what would you say? Were you up here just trying to tell the truth, the whole truth, and nothing but the truth?

A. I wasn't ready to tell the truth.

553 Q. Oh, you were not ready to tell the truth, and that is because you were still fighting your case, isn't that right?

A. That is right.

Q. And you kept fighting your case as long as you could fight it? And when you finally got licked, the Supreme Court of the United States wouldn't take your case, then you tried to fight in another way?

A. No.

Q. That is when you decided—

A. I tried to bring out the truth.

Q. But the only time you made up your mind to that was after you lost your own conviction all along the line, then you made up your mind—

A. I thought a man couldn't be put in jail for not doing anything, but I found it could be. That is how I started talking there.

Q. Well, you did talk, as you call it, after you lost your case along the line?

A. No, the prosecutor didn't tell the truth, and didn't investigate the case the proper way, that is why.

Q. Now, when did you decide you would tell the Government about fixing what you call the truth, that was after you lost your case, wasn't it?

A. Yes, sir.

Q. It was after you tried to get into the United States Supreme Court with your case, wasn't it?

A. Yes, sir.

Q. And when the penitentiary was all ready for you, and you had to go unless you did something, then you started telling the truth, is that right?

A. Oh, that was not the case.

Q. That didn't have anything to do with it, did it?

A. No, sir.

Q. Were you born here in this country?

554 A. Yes, sir.

Q. When you were trying to get out of your trouble, did you go over to Mr. Deneen's office?

A. Yes, sir.

Q. Did you see Senator Deneen?

A. Yes, sir.

Q. You paid him some money, didn't you?

A. No, sir.

Q. Did you offer him some money?

A. I asked him if he wanted any money for his trouble. He said no.

Q. And you went to him just because you thought he was a good lawyer, didn't you?

Mr. Ward: I object to this. It is not true.

The Witness: A. Because he was an honest man.

Mr. Stewart: That is the reason?

Mr. Ward: What was that?

The Court: He said he went to him because he was an honest lawyer. Let it stand.

Mr. Stewart: After you were indicted in the case, you

were under conviction in, you went to see Mr. Roth, didn't you?

A. I went down to see Kretske.

Q. Well, you saw Roth, didn't you?

A. After that, yes.

Q. And you gave Mr. Roth \$100.00, didn't you?

A. No.

Q. Didn't you give him any money?

A. No, sir.

Q. None at all?

A. No, sir.

Q. And did Mr. Roth tell you he would look into the matter and see what he could do?

555 A. Yes. Him and Kretske talked it over, and they said something there, and they went down and looked, and went down with my brother to look at the papers in Glasser's office to see what it is all about.

Q. And is that the first time you talked with Mr. Roth about your own case?

A. I don't remember.

Q. And isn't it a fact that Mr. Roth told you he would look into it; and did you come back in a few days?

A. I don't remember that.

Q. Well, does it bring it back to your mind when I tell you that Mr. Roth reported to you that he had seen Mr. Glasser, and that nothing could be done in your case, that you had better prepare to defend yourself, because they were going to send you to the penitentiary if they could. He told you that, didn't he?

A. That is right.

Q. And Mr. Roth advised you to get yourself a lawyer and defend it in the regular way?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir.

Q. Then later on you asked Mr. Roth to help you furnish your bond, didn't you, you wanted to take down certain things?

A. Yes, sir.

Q. Do you remember when that was?

A. Well, we were put on bond, I guess.

Q. Well, you put up one bond, and wanted to take down some of the security, change it around?

A. Yes, sir.

Q. And Mr. Roth went to some trouble for you, didn't he?

A. Yes, sir.

Q. And you paid him \$50.00 for that, didn't you?

A. Yes, sir.

Q. That is right, isn't it?

556 A. I paid him something, I don't remember what it was.

Q. And that was the last Mr. Roth had to do with your case, isn't it?

A. That is right.

The Witness: I hired Mr. Hess, he did not tell me he had my case fixed. He did not tell me that he was going to fix it. All my contact with Mr. Hess concerning my case was I was discussing it with him so that he could prepare for trial to fight the Government on it. And that was to be done between me and Mr. Hess honestly.

I changed lawyers because Hess didn't want to go through with it after I lost my case and the Judge sentenced me, he said, I was not guilty, and the other three brothers were guilty, that is why he got brought out of the case. We changed lawyers. I then went to Joe Struett, I knew him before, Joseph A. Struett. I had seen him around the building before I went to him. Nobody introduced me to him that I remember. Nobody sent me to him. I knew he was an ex-district attorney. That's all I knew about him. I didn't ask him to fix my case and he didn't say he would fix it. I have spent \$4000.00 on my case.

Q. Trying to stay out of the penitentiary?

A. No, the crooked lawyers got it.

Q. Did Struett get part of that?

A. Yes, sir.

Q. Is he a crooked lawyer?

A. Well, I know he was crooked in my case. He takes too much dough.

Q. And he is crooked because he didn't win?

A. No, not that.

Q. As a matter of fact—

Mr. Ward: Will you let him finish his answer?

A. Every time a lawyer looks at you, because you are an easy mark, they take you.

557 Q. But you never looked at me until you saw me here?

A. Maybe you are one of them too. I don't trust no lawyer.

Q. You don't like lawyers, do you?

A. No. I had an honest lawyer once.

Q. For the purpose of the record, who was the one honest lawyer?

A. Jim Slattery, Senator.

Q. He is now Senator.

A. Senator Slattery.

The Witness: When I was on the stand here yesterday, before we adjourned I remember Mr. Ward asked me about this Zarrittini woman. I said I didn't remember about it last night, and then I went home last night. Not right from the witness stand, I stopped to pick up my car and went home. I did not stop anywhere else. No one talked to me. No one connected with the Government talked to me. Deveraux told me not to talk to anybody, because I am on the witness stand, so nobody talked to me.

I have talked to Mr. Bailey since I started telling them what I call the truth, twenty times, maybe more. A number of those times out in my hardware store. I came down here and talked to Mr. Ward once or twice. It is twice. I don't just exactly remember when was the first time. It was in this building. Mr. McGreal was there beside Mr. Ward. I don't remember anybody else. Mike Bailey might have been there, I don't know. I don't remember anybody else. That was a few weeks ago. That is the first time I saw Mr. Ward, the next time I saw Mr. Ward was when I was here the last few days. I was in here four days now. When Mr. Ward talked to me we didn't talk about the case. He called me in, and he told me to tell the truth, and nothing but the truth.

558 Q. And you looked up at the ceiling when you said that. You were just trying to remember that, weren't you?

A. No, sir.

The Witness: That is the only time I talked to Mr. Ward. He had some papers there when he talked to me. Mr. Bailey did not take statements from me when Ward was there. Bailey took the statements when Deveraux was there. I don't know if Ward had the statement or not. I didn't read it. I have seen that statement. They did not give it to me to take out home with me. They did not tell me to underline the parts I didn't remember. That

never happened. I never had that statement in my possession. Never had it out home.

Q. Do you know an agent by the name of McElroy?

A. Yes, sir.

Q. You know he was discharged, don't you?

A. Yes, sir.

Q. And he was discharged because of some connections with your cases, wasn't he?

A. No, sir, I don't know that.

The Witness: Mr. Roth came out to see me when he was preparing his case here, after he was indicted. I don't remember that I told Mr. Roth that Patsy and I were never in his office together. I did not tell Mr. Roth that was not in the indictment and I didn't say that the agents must have put that in, if it is in there. I didn't say anything like that. I did not tell Mr. Roth I was afraid of Bailey. I did not tell Roth that Bailey carries clippings showing people he has convicted. I did not tell Mr. Roth that Bailey told me he would spend \$1,000.00 of his own money to get Glasser. I did not tell Mr. Roth that I was afraid that Mr. Bailey would cook up a case against me in Ohio and Indiana. Mr. Bailey did not tell me there were some witnesses doing some talking over in Clinton Indiana against me. He just said there was a conspiracy case. But he didn't tell me where. I wouldn't like to have another conspiracy case put against me. I don't know anything about that.

559 . Q. Well, why did he tell you that do you think, there was a conspiracy case being worked up against you?

A. Why, he was just telling me, he says he ain't through with me.

Q. And was that after you told him all the truth in the matter, or was that while you were refusing to tell him? That was, wasn't it.

A. No, sir.

Q. When was it?

A. Oh, after I signed the statement he told me he had a conspiracy of a bunch of fellows.

Q. Including you, that you could be put in?

A. Yes. He didn't mention no names.

Q. As a matter of fact, Frank, if you could just go and do that year in the penitentiary, and that is all they would put against you, you would probably be glad to do it, wouldn't you?

A. Yes, sir, if it is done honestly, I would go in there, yes.

Q. But you fear they might have other conspiracies?

A. No, sir, I am not fearing any other conspiracies. I am fighting the case because it was not done honestly.

Q. Well, that makes you a little bit mad at Glasser?

A. That is true.

Q. You are mad at Glasser?

A. No, sir, I am not mad. But he didn't investigate the case the right way. The Prosecutor is supposed to give a man a fair chance.

Q. Well, he put on Government witnesses to give testimony, against you, didn't he?

A. Well, when he started showing pictures with blind windows—I have a store where he could send a couple of men, and investigate, and tell the Jury the truth, well, then, I wouldn't get convicted.

560 Q. Was that the only thing that was untrue in the picture, the blinds were down?

A. No, not the blinds. They took it when the windows were frozen, and the only thing you could see was my name and address, you couldn't see nothing in the store, and the last, them other words wasn't right.

Q. You tell us, are the agents lying when they said they dealt with you?

A. Yes, sir, the agents were lying too.

Q. Do you think Mr. Glasser got them to lie?

A. No, sir.

Q. Well, on the testimony of the Agents, they had a case against you without any picture of your windows?

A. No, they wanted to put me away, and they did. They got their ideas together, and they put me away.

The Witness: I don't know the exact dates, but it was around when I was put on bond that I was through with Mr. Roth. It was in 1939. I guess this Miller I spoke of in the bootlegging business is in my statement that Mr. Ward had that I gave Mr. Bailey. I don't remember when I first told Mr. Bailey about that. It was through the whole case, within three or four months. I don't remember when, four or five or six months; I don't remember the dates. The case has been going along so long, I don't remember just when. Miller lived on the north-west side, I have known him a long time. The Government has looked for him now, and he disappeared. The Government started looking for him about three or four months ago.

Mr. Bailey came out to my store to see me before I decided to tell about these things. He didn't say much the first time he was there, he just asked me two or three questions, and he says, "Frank, what do you do and are you a bootlegger?" and I says, "No," and he says, "Do you know anything?" and I says, "No." He said, "Why don't you want to tell me anything" and I said, "No," 561 and that is all he asked me. That was before my case ever came up, or ever heard of my case, and I wasn't in any danger then, I thought, so I didn't have any reason then to be telling Mr. Bailey anything. I didn't want to talk to him about my private affairs. The next time I saw Mr. Bailey was when I came out here to put up bond on my own case. He didn't talk to me much, he just told me he got me, and I told him I said it ain't right. I said it was dishonest, I says, and went back and forth, words like that, we didn't talk about anything else. I saw him right through the whole case, all my case. In the lobby. He talked to me. I don't know what he said. I told him he ain't fair, and all like that, and he smiled, and he says that is the way we present a case, or something like that. I seen him so many times, I don't remember how many times. He would drop into my store once in two weeks with Deveraux. It was just once that he dropped in my store when I told him I didn't want to talk to him about my private affairs. After Judge Woodward sentenced me, Mr. Bailey did not come out to my store. I did not see anything of Mr. Bailey until I lost my cases in the upper Courts. Then I saw Mr. Bailey down at the new post-office. I did not see any agent out at my store.

I had lunch with my brothers, Mike and Tony, nobody else. There were lots of people there. A lot of other people, no agents. No agents in the room.

I am a tinsmith by trade. I never made a still in my life for anybody. I hired Captain Boddie for my brother Pete, he is a lawyer, practicing around this Federal Building. I did not fix him, I did not ask him to fix my case, I did not tell him to fix my case. I did not tell him the case was fixed, I just hired him for his legal services, that was honest.

The case in which I mentioned Mr. Slattery as being an honest lawyer is a case in which I was interested and he was hired. They were not alcohol cases. I played politics with him.

562 Q. Were you ever interested in a case he was the lawyer in?

A. In my case?

Q. Cases in which you were interested.

Mr. Ward: Your Honor, I object to calling into this case—

The Court: Objection sustained.

The Witness: I do not know the still out at Ottawa that was raided. I don't know anything about that, I never heard about it. I never had any dealings with Mr. Slattery about it.

I sent a case of whiskey down to this building by my brother Mike for Mr. Glasser, that was in 1937, I wasn't indicted then, I did not have any case pending.

My lawyer, Mr. Hess, did not file any papers for probation. He didn't ask for that. He didn't say nothing. After he sentenced me, he didn't say nothing. I asked him after while, why, and he said he wouldn't want to get into the Judge's hair, asking for favors like that. I am not getting in the Judge's hair now.

Q. Now, did you see Mr. Bailey last week?

A. Yes, sir.

Q. Did he tell you to tell your brother Tony to quit peddling alcohol?

A. Yes, sir.

Q. That if he did not quit peddling alcohol, he might get arrested and that would hurt this case, did he tell you that, too?

A. No, he said my brother said he is peddling alcohol, and "I heard he is in Ohio," I said, "You are mistaken."

Q. He said he told you your brother should quit peddling alcohol, is that right?

A. Yes, sir.

The Witness: After my conviction I did not come in for a talk with Mr. Glasser. Not at all. I didn't come in and tell Mr. Glasser that Mr. Bailey wanted to make a deal with me, that never happened. I did not tell Mr.

Glasser that if Mr. Glasser would make a deal with me, 563 I would be glad to tell a lot of things about the agents.

Nothing like that happened.

Q. Now, when you were before Judge Woodward, testifying as a witness, I will ask you if these questions and answers took place. This is immediately following the part I asked you this morning, about the same conversation.

"Question: Did you have any more conversation?

"Answer: I don't know.

"Question: In this conversation that you had with Mr. Bailey, at that time, did you tell him how long you had lived at those premises?

"Answer: Yes, sir.

"Question: How long did you say you lived there?

"Answer: I don't remember exactly just what I told him.

"Question: Have you related all the conversation now, Mr. Hodorowicz, to the best of your recollection?

"Answer: I told him, I says, 'You are blaming me for everything in this town because my name is Frank Hodorowicz.'

"Question: What did he say to that?

"Answer: Well, he said, 'You get 10 per cent of everything that goes on in this town.' "

The Witness: That is what he said. I testified that is what Mr. Bailey said. Mr. Bailey said I got 10 per cent and I said no. I don't remember that far back if you read correctly my testimony before Judge Woodward.

Mr. Bailey did not come out and see me before I went on the stand before Judge Woodward. He was out there a couple of times. Maybe I was asked when I was before Judge Woodward about Bailey coming out. I had a conversation with Mr. Bailey. I told Mr. Bailey "you are
564 blaming me for everything in this town, because my name is Frank Hodorowicz, and Mr. Bailey said, I get 10 per cent of everything that goes on in this town. I don't know that I said he was crazy. I denied it.

Q. Now, can you tell this Court and Jury why Mr. Bailey, a representative of the United States Government, would come out there and tell you that you were getting 10 per cent of everything that was going out there in the bootleg business? Can you tell us why?

A. That is the way the reports were reading when he came to town.

The Witness: I told him there was no truth to that and that is my position now, that there is no truth to those claims. If people claim I am a bootlegger that is just a false claim against me, the money I made, I made out of the hardware business. That was three or four or five thousand dollars a year over a period of ten years. During the past ten years I have had no other income except the income I told you was from that hardware store. I did

not pay income tax on \$18,000.00 for one year during the period you are talking about. I have paid income. The amounts I have paid are on record, the Government has it. I only paid on income I got out of the hardware store. That is all I paid on.

Redirect Examination by Mr. Ward.

On this petition for probation that Mr. Stewart was asking me about, my lawyer was Mr. Struett. He represented me in the Circuit Court of Appeals. He filed briefs and arguments for me in the Circuit Court of Appeals. It was about May, 1939.

Q. And he carried your case through all the way as far as he could?

A. Up to the Supreme Court.

Q. Now Mr. Struett was your lawyer back, right after you were convicted, is that true?

A. Yes, sir, he is still my lawyer.

565 Q. He is still your lawyer in that case? Now, this petition for probation you called me on the telephone one day, and you said that your lawyer was in Cincinnati.

A. That's right.

Mr. Stewart: Can we have Mr. Ward sworn, Judge? I object to his testifying.

Mr. Ward: You have gone into this.

The Court: Make your objections.

Mr. Stewart: My objection is that he is leading.

Mr. Ward: He went into this and mentioned my name.

The Court: Objection overruled.

Mr. Stewart: But my objection is not a matter of the subject matter. He can ask anything he wants. My point is, let him ask the witness and not tell him.

The Court: This witness was in a measure somewhat hostile, and it is proper to lead him at times. If you can proceed without leading, do so; but if you have to lead, do so.

The Witness: That is true, my lawyer Mr. Struett at the time of this conversation that I had with you, had this petition already drawn up. You told me to get in touch with his office and they said he was in Cincinnati and I called Cincinnati. Some young fellow from Mr. Struett's office came over with that petition.

The Court: Let him testify.

The Witness: I talked to Cincinnati about it and he

said there was a fellow taking care of it—I don't know. And the petition was filed awaiting the return of Mr. Struett. I wasn't in Court at all. You never said anything to me about the outcome of this probation proceedings. I don't know what Judge Woodward is going to do about that. That is within his mind. I know Albina Zarrattini got caught. I did not know that she was indicted by Daniel Glasser.

566 At no time from the time I first told my story to the Government authorities in this case, down to and including the time you are asking this question, has Mr. Bailey or Mr. Deveraux or yourself or anyone connected with the United States Government ever promised me anything for testifying in this case.

Recross Examination by Mr. Stewart.

I have no hope about that. They haven't got anything to do with my sentence. It is up to the Judge.

Q. But you hope the Judge will take this into consideration what you are doing today?

The Court: Hope springs eternal.

Mr. Stewart: Yes.

Q. You hope it will do some good, don't you?

A. I don't know what will happen.

Q. Oh, you hope it will do some good now, don't you?

A. I hope all the way through.

Q. And you hope this does you some good, don't you?

A. Surely.

(Witness excused.)

ANTHONY HODOROWICZ, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by the Court.

My name is Anthony Hodorowicz, my address is 12417 South State Street, I am a tin-smith. I am 29 years old.

Direct Examination by Mr. Ward.

I am a brother of Frank Hodorowicz. I was arrested by the United States Government, charged with a violation of the alcohol tax laws in 1937. I know Clem Dowiat. I

know Claude, also known as Elmer Swanson. I didn't have any connection with a still at 6949 Stony Island Avenue. I was indicted in that case with Clem Dowiat and Elmer Swanson. We went before the Commissioner for bond. I was arrested, it would be two years on New Year's Day. I don't remember who arrested me. I remember there were a lot of men there, I remember Mr. Bailey in particular, he took me to the station. I did not exactly try to make my escape at that time, they all jumped on me, they didn't state who they were. Later I found out who he was, so after that I remember who Mr. Bailey is. The only time I remember being before a United States Commissioner was when I went on bond, I did not have a lawyer at that time.

I know Mr. A. E. Roth in this case. He drew a diagram with me and went over my case. It was in his office that he drew the diagram, that was before I went to the United States Commissioner's office. And now I recall going there with him. I have seen Mr. Glasser in court. He was there at the Commissioner's that day. I recall Mr. Bailey being there at that time.

Q. Your lawyer asked for a continuance,—Mr. Roth, that day?

A. I don't know, they went in chambers.

The Witness: Mr. Bailey was there at the time. He remained there thruout the time my matter was before the Commissioner. Mr. Bailey was there when we left. I left with Roth and Clem Dowiat. No one else. I don't think Swanson was there. We didn't go back to Roth's office with him. We left Mr. Roth on the street. After that I saw Mr. Roth when we were called to court. I think it was before Judge Wilkerson, pardon me, Woodward. Elmer Swanson, Dowiat, myself and Roth were in court that day. At that time I was charged with possessing an unregistered still.

Q. And I suppose when you talked to Mr. Roth, your lawyer, and he drew this diagram, I suppose you told him all about this still?

A. He knew nothing about it.

Q. What was he drawing a diagram about it for, Anthony?

A. I wanted to know what I was in court for.

568 Q. And Mr. Roth was going to tell you what you were in court for?

A. Mr. Roth was not going to tell me.

Q. What was he drawing the diagram about?

A. What the case was all about.

Q. He was telling you about the case?

A. I needed an attorney.

Q. He was telling you about the case, was he?

A. Yes.

Q. Telling about the still?

A. Yes.

Q. Telling you about the still at 6949 Stony Island Ave.

A. Yes.

Q. When you got to court before Judge Woodward, you knew that you were charged with possession of this still?

A. I didn't know I was charged for it.

Q. What did you think you were in Judge Woodward's court for?

A. I didn't know.

Q. Did Mr. Roth tell you?

A. He says they were holding me for possession of the still.

Q. When did he tell you that?

A. When I went to see him.

Q. The first time?

A. No.

Q. When?

A. Well, I was held on that when I was went on bond.

The Witness: I was in Kretske's office with my brother Frank, Elmer Swanson and Clem Dowiat. When we were there a conversation was carried on with Mr. Kretske.

Q. What was said?

A. Well, we needed a lawyer.

Q. What was said by Mr. Kretske or you or anyone?

Tell what conversation was had.

569 A. Well, we needed a lawyer to defend us, he said,—

Q. Mr. Kretske was a lawyer, wasn't he?

The Court: Let him finish.

The Court: Q. Who said you wanted a lawyer to defend you? Did you tell Mr. Kretske that?

A. We all wanted a lawyer.

Q. Did you tell Mr. Kretske that? Who was the spokesman for the crowd?

A. My brother.

Q. What brother?

A. Frank.

Q. What did he say to Mr. Kretske?

A. He said, "We need a lawyer to defend the boys."

Q. What else was said?

A. He said he could get a good lawyer.

Q. Mr. Kretske said in your presence, he could get you boys a good lawyer?

A. Yes.

Q. What then was said? Did he tell you then who the lawyer was?

A. No, he said he would send us to his office.

Q. And did he give you any address to Mr. Roth?

A. Yes.

Q. You went to his office?

A. Yes.

Q. When you got to his office, did you discuss with him this case?

A. Yes.

Q. Did you give him a description of the layout of the ground and still, so he could draw that plan?

A. No, sir.

Q. Who gave him that information?

A. I don't know.

570 Q. You don't know.

A. I don't know if he had anything about that.

Q. Did you ever see that diagram?

A. I didn't know there ever was anything like that.

Q. Then you did not give him any information or details to enable him to draw the diagram? Is that what you want us to understand?

A. I didn't tell him that. What I wanted to do was to have a lawyer for the case.

Q. Directing your attention to this, did you tell Mr. Roth, describe to him the premises where this still was found?

A. I told him just where I was picked up on the street.

Q. You told him nothing about the dimensions of the building or the layout of the plant or anything like that?

A. No, I just told him what corner I got picked up.

The Court: I see. Proceed.

The Witness: Then we went to the commissioner's office. I don't remember Mr. Roth saying anything to me when we got out of the commissioner's office about being disappointed that the case was not tried that day. I don't remember any conversation with Mr. Roth after I got through at the first commissioner's hearing. They

had an argument why it was not held. Mr. Roth wanted to try the case right there at that time. I didn't hear what Mr. Glasser said. They went in chambers. They argued that in chambers. Mr. Bailey was there at the time. I never went back to the commissioner's after that. The next time I appeared in court was after I was indicted. I don't remember Mr. Glasser being up before Judge Woodward when I got there. Mr. Roth was there. I could not hear what Mr. Roth did or said because he was up in front. They called us up in front and had us give our names and we went out of court. I did not know when I left the court room when I was supposed to return. I never returned. That is the last I ever heard of that case. I have not been indicted on any other case in 572 this building.

Examination by the Court.

I cannot give the date when I was in the Commissioner's office, it will be two years. The date, the year of this New Year's day was two years; In 1937, I think.

Direct Examination (Resumed) by Mr. Ward.

I don't remember the date of the first time I appeared in court before Judge Woodward, it was after Christmas, after New Years. In any event I only went there once and never returned. I have never been called to answer that indictment.

The Court: Q. You were never convicted, never paid a fine and never went to jail?

A. No.

Cross-Examination by Mr. Stewart.

The still where I was arrested was over in the neighborhood of 69th and Stony Island, I did not have any interest in that still. I had never been there, I never hauled any alcohol, I have no interest in any still. I never hauled any alcohol. I never violated any law concerning alcohol in all my whole life. I was an innocent man. I was walking along the street and going there into that neighborhood because somebody was looking for a used car. That was me, because I was going into the tin-smith business for

myself. That was the only business I had in that neighborhood. And some men dressed like workman jumped on me. One had a flash-light in his hand and he hit me over the head with it, and he pulled a pistol. When he was hitting me first, he didn't even tell me they were government men. Later on they told me they were government men. I was taken to a hospital for my injuries. I never received any money from anybody in payment of services concerning the handling of alcohol. I never had anything to do with that business.

I don't know a thing about whether Elmer Swanson had an interest in that Stony Island still.

573 I don't know anything about it. I don't know if

Clem Dowiat who was arrested with me had any interest in that still. I don't know if he was ever in it. I never asked him.

My brother Frank is in the hardware business. He is not in any other business. He never had anything to do with alcohol, he never bought any that I know of. He never sold any that I know of, he never had an interest in a still, that I know of. I live about five blocks away from Frank, and I visited him often, and I was in his store often.

Q. Now, Frank went up with you and acted as spokesman when you talked with Mr. Kretske after you were arrested, is that right?

A. Yes, sir.

Q. You were out on bond then?

A. Yes, sir.

Q. And did you ask your brother Frank to fix that case for you?

A. No.

Q. You did not want it fixed.

A. I didn't know anything about that.

Q. You were an innocent man?

A. Yes.

Q. All you wanted was a lawyer so you could be represented and bring out the facts?

A. Yes.

Q. That was all you needed?

A. Yes.

Q. You didn't need to fix anybody?

A. No.

The Court: Were the facts brought out before the Judge in your presence, so that the Judge knew the facts?

A. No.

Q. Weren't the facts brought out before the Commissioner so that he knew all the facts?

574 A. Yes, in front of the Commissioner.

Q. What was said in front of the Commissioner about your connection with this still?

A. He said he would have to hold me over.

Q. Before then, you appeared before Judge Woodward?

A. Yes.

Q. Was there a full disclosure of facts made before Judge Woodward, as to your connection in that case?

A. No, not that I heard of. I was sitting at the bench.

Q. Were you called before the Judge at any time?

A. Just to mention our names, to be present.

Q. The Judge did not ask you any questions?

A. No.

Q. The lawyer didn't ask you any questions in front of the Judge?

A. No.

Q. Did Mr. Glasser ask you anything in front of the Judge?

A. No.

Q. So you don't know,—your recollection is that there was not a complete disclosure of all the facts that connected you with that case, before the Judge?

A. It was all in front of the Commissioner.

The Court: That is all.

Mr. Stewart: Q. Do you know what "disclosure of the facts" means?

A. Disclosure of the facts?

Q. Yes, do you know what that means?

A. Explain yourself.

Q. Well, I am just asking if you understood the Judge when he used that term. Did you understand the Judge?

The Court: Q. Did you understand what I meant?

A. No.

Q. I will ask you this: Did your lawyer or Mr. Glasser, or anyone in your presence, in the Judge, make any
575 statement to the Judge about your conduct and your relationship in relation to this still and the discharge of the indictment?

A. No.

Mr. Stewart: Q. Well now, you had no relationship to that still, did you?

A. No.

Q. There was no facts to connect you with that still?

A. No.

Q. There was no fact that could have been told to anybody to connect you with that still, was there?

A. I think not.

Q. Are you pretty sure?

A. Yes, sir.

Q. You don't know of any fact to connect you with that still?

A. No.

Q. If they told the truth about you, all they could tell was that you were in that neighborhood and they arrested you near the still; is that right?

A. Yes.

The Court: Q. Did you hear them tell the Judge that?

A. No, I didn't.

Mr. Stewart: Q. The things that were said to the Commissioner were said in chambers?

A. Yes, sir.

Q. Now, when you were called after in Judge Woodward's court and your names were asked, that is what we call an arraignment. You have heard that expression, haven't you?

A. Yes.

Q. That is the time you were asked whether you were guilty or not guilty?

A. Yes, sir.

Q. And a plea of not guilty was entered?

A. That is right.

Q. Then the case was set over for another day for trial?

576 A. Yes, sir.

Q. So there was no occasion to try it on that day?

A. No.

Q. It was not up for trial?

A. No.

Q. Then on the day it was supposed to come up, do you know what that date was?

A. I don't remember the date.

Q. But you do know that at that time, you made a note of it so as to know when to come down to court again?

A. Yes, sir.

Q. And you did come down to court again?

A. Yes.

Q. You thought your case was coming up?

A. Yes.

Q. And before you came to court, you went over to see your lawyer, Mr. Roth, again?

A. Yes, sir.

Q. And Clem was with you?

A. Yes, sir.

Q. And Elmer was with you?

A. Yes.

Q. All three of you talked about what you would testify to when you went in court and went to trial, is that right?

A. Yes.

Q. You were going to tell what you told us here, that you were an innocent man and just got caught out there—

A. Yes.

Q. Is that right?

A. Yes.

Q. When you got over in court and sat in the audience, you were waiting for your name to be called?

A. Yes.

Q. Your lawyer was there to conduct the trial?

A. Yes.

577 Q. Your lawyer didn't tell you he had the case fixed,—he was ready to go to trial, wasn't he?

A. Yes.

Q. Did you hear them call other cases?

A. Yes.

Q. Did they go all through their call and had not called your case?

A. Yes.

Q. And then your lawyer went to investigate to find out what happened?

A. Yes.

Q. He went down to the clerk's office, is that right?

A. That is right.

Q. And you went with him?

A. Yes, we did.

Q. You found out that without your knowledge and without your lawyer's knowledge, your case had been thrown out some time before, is that right?

A. I didn't know nothing about it.

Q. You found it was S. O. L., does that bring it back to your mind?

A. In other words, we weren't called.

Q. Your case was stricken off?

A. I don't know nothing about stricken off.

Q. Anyhow, you didn't have to stay there any more that day?

A. No.

Q. And you went on home?

A. Yes.

Q. That is all you know?

A. Yes.

Redirect Examination by Mr. Ward.

The Witness: I don't know if Mr. Glasser was there and struck my case off.

578 Q. You don't know how many government agents were following you, for two or three months before you were arrested, do you?

A. No.

The Witness: I don't know what evidence the Government had on me when I was indicted. My share of the money paid to Mr. Roth was \$400.00, I didn't pay it to him, my brother Frank paid Kretske. I didn't pay anything to Roth.

Q. About this diagram, how long did it take for Mr. Roth to draw that diagram?

A. Well, that was said in his office, he was protecting our case.

The Witness: I told him where I was picked up. I was picked up on the sidewalk, I was walking down the street, I was just about picked up bodily, I mean when I was arrested. I was walking by right in front of the place where the still was housed. That is true. I was with my nephew. They came up to me and arrested me. It was quite a ways from where I live. I judge maybe eight or nine miles. It was around noon time. There was a used car lot there and I was going to see about a car. I had a car. I did not drive there in a car. I went on the street-car. I had a car at that time.

Q. But you left your car home and took a street car to go to a used car lot to see about a car?

A. Yes.

Q. It was just about the time you got to the used car lot when you got arrested?

A. That is right.

Q. It just happened that in place of that, you got arrested. There was a still inside, isn't that true?

A. Yes.

Q. When you got to Mr. Roth's office, did he talk about the still?

A. He says I was held on ownership of the still.

579 Q. Did you say to Mr. Roth, "That can't be so, I never was connected with the still?"

A. That's right.

Q. What did he say to you?

A. Well, he was asking all of us different questions.

Q. What did he say to you?

A. Well, that was all he asked me there, just that.

Q. What did you mean when you say your share was four hundred dollars? Your share of what?

A. For the fee of the lawyer.

Q. Who was to pay the other shares?

A. Well, the other two. Clem and Clarence.

Q. Well, Clem only got twenty-five dollars a week, didn't he?

A. Yes, but we all helped.

Q. He was your nephew, a boy about seventeen or eighteen years old?

A. Yes.

Q. Your brother's boy, is that right?

A. That's right.

Q. You never did give the Government a statement in this case, did you?

A. What do you mean?

Q. Like your brother Frank. You know what I mean.
(No response.)

Q. Did Mr. Bailey ever talk to you, or Mr. Deverieux?

A. About what?

Q. About Mr. Kretske or anyone else?

A. They were there, yes.

Q. Did they talk to you?

A. Yes.

Q. And you would not give them any information?

A. Because I didn't know any.

Q. That is what you told them?

A. Yes.

580 Q. You never did give any statement?

A. No.

Q. Anything you know about this matter, you will keep locked up in your head, is that it?

A. I haven't got anything locked in my head.

Q. I say, if you have.

A. No.

Q. You never talked to me about this case, did you?

A. No.

Q. Outside of you coming down here a day or so ago, that is the first time you ever met me in your life?

A. Yes, the second time I ever seen you.

Q. Yes.

The Court: What is your height?

A. Five feet, ten and a half.

Mr. Ward: Q. How much did you weigh at the time of the arrest?

A. At that time?

Q. Yes.

A. About two hundred and forty.

Q. Who was the other man you say attempted to pick you up?

A. What do you mean?

The Court: That attempted to arrest you.

A. I don't remember. There were three or four of them jumped on me.

Mr. Ward: Q. They jumped on top of you?

A. They might just as well.

Q. You were walking along the street and all of a sudden three men landed on you, is that right?

A. That is right.

Q. You don't know whether they jumped out of a building or a tree or where?

A. They were in a car.

Q. Were you running at the time they caught up to you?

A. Yes, sir.

581 Q. Mr. Bailey had to use his pistol?

A. Yes, sir.

Q. How far had you run after Mr. Bailey got out of the automobile, before he caught up with you?

A. About half a block.

Q. Half a block?

A. Yes, sir.

Q. When he caught up with you, he had to use his pistol to take you into custody?

A. He just hit me on the back of the head.

Q. Did you say to Mr. Bailey that you were much interested in the used car business and were over there solely to buy a used car; and were just about to go in and select a car that appealed to you? Did you say that to him?

A. At that time?

- Q. Yes.
A. No, sir, he didn't give me a chance.
Q. You were running, weren't you?
A. Then they caught me.
Q. But you ran away?
A. Naturally. I think you would run, too.
Q. You did not stand when they got out of the car?
A. When they got out of the car?
Q. You didn't stand when they got out of the car?
A. I was just walking.
Q. Well, I am just asking you.
A. And I am telling you.
Q. When did you start to run, after they got out of the car?
A. After they ripped my jacket open.
Q. Oh, you pulled away and started to run?
A. Yes.
Q. Did they say they were Federal officers?
A. No.
582 Q. Did you ask them if they were Federal officers?
A. No.
Q. Did you think it strange that these men would jump out of a car and run over and grab you by the jacket?
A. It was strange.
Q. So you started to run?
A. Yes.
Q. When was the first time you saw Mr. Bailey's pistol?
A. After he hit me.
Q. Then he took you in custody?
A. Yes, sir.
(Witness excused.)

CLAY B. ANNIS, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Examination by the Court.

My name is Clay B. Annis, I live at 1356 Thorndale Avenue, I am 39 years old. I am an investigator of the Alcohol Tax Unit, about six years.

Direct Examination by Mr. Ward.

I have been connected with the United States Government about ten years. I have been in this district three years. I came to this district December 28, 1936. In the course of the discharge of my duties I have had occasion to visit the United States Attorney's office on cases. I am not a special investigator, I am an investigator. An investigator usually works on substantive cases, that is, makes the cases. A special investigator's duties are to jacket a certain number of cases—he works on jacketed cases. I was going to explain what a jacketed case is, that is a number of cases in connection with a certain defendant or defendants, and that ties them altogether, and makes a special case out of them. Ordinarily a special investigator works on a different type of case than I do. I arrested a man by

the name of Clem Dowiat. I arrested him in the 583 vicinity of 123rd and Halsted at 11:00 P. M. on June 29th, 1937. I had followed him from the garage where we later found an illicit distillery in operation. He was in an automobile. Investigator Krall and myself in a government car, followed him there to these premises where we found a still at 123rd and Halsted Streets, and stopped him. I identified myself as a government officer and asked him what he had in the car. He said, "I have not done anything wrong." I could see a large object in the car, covered with a blanket. I pulled the blanket off and exposed six five gallon cans. I opened one and smelled and tasted it and found it to be alcohol. Before that time I had reason to believe that there was alcohol in this man's car. Mr. Kral and myself had been watching these premises at 12358 South Ashland Avenue in Calumet Township, or what is called Calumet Park. About 10:30 I saw a model A Ford driving to the gas station, into a little building directly across the street, east of those premises that we had under observation. I saw the man come out of the gas station, go to the little house there and apparently talked to the driver of the car. I could not at that distance identify either of them. Then the car drove directly across the street, the driver opened the door to the garage and drove the car in.

A few minutes later, this man went over on foot, and after he had entered the garage, Mr. Kral and myself left the Government car out where we were about one hundred

and fifty feet north of the still premises on Ashland Avenue, and walked down to the Illinois Central tracks. They run in a southwesterly direction and run right alongside this garage where we thought the still was. It was no more than fifteen or eighteen feet at the most from the tracks, or no greater distance from the garage.

It was dark, and from the Illinois Central tracks I could see through a window into the interior of this garage. The window was open about four inches approximately. There were no lights in the garage except the lights from the headlights of this car, which were turned on. I could see a hole in the floor and apparently light was coming through the hole from the basement.

584 I could see this large man, but I could not see his face. He was a man about the same size as the man I saw walk across the street. He was picking up these five gallon cans and they appeared to be heavy. He seemed to be taking them from someone who was down in the basement, and he was stacking these cans alongside the car. I could smell alcohol, a slight odor of alcohol.

After I saw this, I went back and got in the Government car, and a few minutes later, we saw this Model A Ford come out of the garage and drive east on 124th Street. We followed him to Halsted where he turned North on Halsted, then went east a block, south a block and best west a block to Halsted, and then made a turn around those blocks and started south on Halsted. We were following him and had him in sight all the time.

We overtook him at 123rd and Halsted, and that is where I stopped him and identified myself as a Government officer, and found the seizure which I testified to.

The next day I saw Mr. Glasser about that case, I think we talked to him. I don't remember what was said, if anything. I remember being before a United States Commissioner. We only had the arraignment there, he was arraigned, but I did not take the stand. Mr. Kral did. The defendant did not waive examination, the hearing was set for the 9th of July, 1938. He and I were there again on that day, and on that day the defendant waived his hearing. Mr. Glasser was representing the Government there at that time. The defendant waived hearing and he was held to the District Court. Subsequent to that time I had occasion to be a witness before the Federal Grand Jury in this building regarding that particular case on the 6th of October, 1938. Mr. Glasser was present before the Grand

Jury representing the Government. He examined me there as a witness there. The story I told the Grand Jury did not differ in any respect from what I tell this Jury here. I did not find out what happened to the case, because I did not inquire. I was told about that a week ago. I merely looked it up in the case report file as to what happened to the file.

585 It says no true bill was returned. As an investigator of the Alcohol Tax Unit it is a fact that I wait from time to time to be notified by the Assistant United States Attorney when I am needed or wanted with reference to a particular case. Mr. Glasser nor anyone from the United States Attorney's office subsequent to my appearing before the Grand Jury, never notified me or talked to me, or asked me to come over to this building in reference to that case. The automobile that was seized was sold to a party named Max Hence, Oaklawn, for sixty five dollars. It was sold by the Government in an administrative way, that car was taken and disposed of.

Mr. Ward: I see. Cross-examine.

Mr. Stewart: No cross-examination.

(Witness excused.)

PATRICK DONAHUE, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Patrick Donahue, I am an investigator, Alcohol Tax Unit, since my connection with the Government in March of 1935. I was located here in Chicago from March 1937 until December 1937. Prior to that I was located in Indianapolis and South Bend. I am a lawyer but never practiced. Along about January 9th, 1937, I had occasion to conduct an investigation which afterward led to the arrest of Peter Hodorowicz.

On January 9, 1937, I came from Fort Wayne to Chicago in company with a man by the name of Russell Gratz, a citizen. We drove to the Hodorowicz hardware store at 11823 South Michigan, and went into the store. I was the first to enter and Mr. Gratz followed me. We asked to see a person by the name of Pete. A man came out from the rear portion of the store. There was a door separating the

rear of the store from the storeroom proper. This man said, "Who do you want to see?" Mr. Gratz said, "I would like to talk to Pete." He said, "I am Pete." He was the same person I later identified as Peter Hodorowicz. This man, Mr. Gratz, who was with me said, "Well, we came up to contact you to get a little stuff."

586 Pete said, "How did you hear from me? How did you hear about me? Who told you about me? Where did you get my telephone number?" We had called him from Fort Wayne before going into the store in Chicago, that same morning. It was now about 3:00 o'clock in the afternoon when we went in there. Mr. Gratz said: "I picked up your name in a speakeasy in Fort Wayne. To tell you the truth, he told me to go out to Chicago to see you."

We were dressed in old clothes, I had corduroy pants, and had not shaved for several days. Mr. Gratz said: "In fact, I got your name from Chuck." He said, "Do you know Chuck?" Mr. Gratz said, "Yea." Pete said, "And do you know Bruce?" Mr. Gratz said yes. He was referring to Bruce Coff, who were at that time bootleggers in Fort Wayne, whom we had been trying to catch in Fort Wayne.

Pete said to Mr. Gratz, "They are very fine fellows." He mentioned that they were in Florida or California at the time. I don't remember which but I will say California. He said he just got a postal card from Chuck Grable the other day, and he said, "If you are friends of Chuck Grable and Bruce, you will be friends of mine."

Mr. Gratz said: "What we are here for is to get a little alcohol. We have been getting alcohol from Toledo, but the last time we brought a little water instead, and don't want to do any more business with them. We are up here to get a contract and be sure that we are getting alcohol." He said, "This is my brother," and pointed to me. Pete looked at me and said, "Hello, Doc. From now on, your name is Doc."

Mr. Gratz asked Pete, "How much is your stuff?" Pete said, "It is ten dollars now." He said, "You were paying ten fifty in Toledo, I know, because I probably get the market price before anybody else in the country. Our stuff is good. If you want to do business with us, we will treat you right." He said, "I suppose you fellows will likely go out this afternoon with some?" Mr. Gratz

said, "No, we did not come for any today. We just
587 came to get a contact. We did not bring our car
that we usually haul it in. That is a Ford and is
being repaired. We just came to make contact and would
like to get some by Tuesday or Wednesday of next week.
By that time our car will be repaired." Pete said, "That
is fine. We will treat you right." He said, "You don't
have to be afraid here in this part of town. I will well
acquainted and will see that you go out on the right high-
way to Indianapolis to get back home. I have had several
fellows from Fort Wayne that I furnish alcohol to. There
are a lot of drivers that come in here and are a little too
drunk to go out. When they are, I put them to bed." Mr.
Gratz said, "You will have to watch this fellow. He
is more or less inclined to drink too much. If he ever
comes in and looks like he is drunk, don't let him leave
that way." I told Pete, "Well, a fellow has to have a
drink once in a while."

Then we got arguing on the question of how I was going
to know it was not going to be water. Pete said, "I will
let you go right with the fellow and examine every can
and make sure it is alcohol. That is the way we do busi-
ness." He gave Mr. Gratz some paper with an address,
11823 South Michigan, that Pete wrote on it, and he gave
me that paper. He gave Mr. Gratz another paper with
the address 835 W. 123rd street on it. We left then and
went back to Fort Wayne.

On January 12th, which I believe was Monday, I called
from Fort Wayne to Peter Hodorowicz, and I talked to
Pete over the phone. I recognized the voice as being
Pete's. I said, "Pete, this is Doc from Fort Wayne. I am
coming in this afternoon between 2:00 and 3:00 o'clock." He
said, "That will be just fine." We left Fort Wayne
and got into the Hodorowicz store. I was alone this time.
I got into the store about 3:00 o'clock. I parked my car
about half a block north of the hardware store on South
Michigan street, walked in. I was driving a Hudson coupe
and was followed by investigators Farner and Smailwood
in another car.

588 As I walked in, there was a lad behind the counter
with a withered arm. I asked for Peter and he said,
"I will call him." Pete came out and I said, "Here I am
for my first load, Pete." He said, "That is swell. Can
you wait until a little after 4:00 o'clock? There is a lot
of WPA workers coming into this place at this time, and

although they don't bother, I don't like to have everyone know my business. How much do you want? I said, "Not much, because the car isn't repaired yet and I have a borrowed car. I want only ten fives." He said, "Oh, if that is all you want, I can fix you up right away."

He turned to this tall slender lad who wasn't over twenty-five years. He said, "Pete, where is Cooky?" This big Pete said, "He just stepped out the door. I later found out who Cooky was. Walter Hort. Within a few minutes, Walter Hort came in the store. Pete called Cooky and said, "Here is a new man from Fort Wayne. He will buy his stuff here from now on, but he only wants a small load, ten five's. You take his car, Cooky, and we will meet you out at the place." He said, "Give him your keys," so I gave Cooky the key to the Hudson. Cooky said, "Did you say it was a Chrysler?" I said, "No, a Hudson." I pointed out my car and he started to walk toward it. Pete said, "We will go in this car," and we got in Pete Hodorowicz' car, which was a Chrysler, and backed around. He took me over to State Street and showed me where he lived; then he drove me to 835 West 123rd Street, and said, "This is my place, too."

As we got in the saloon, we walked to the back room. Pete pulled out a small note book and began to write something in it. He said, "That will be ninety-five dollars." I said, "I can't pay any money until I make sure that is alcohol." He said, "Wait until Cooky comes back." It was not over ten or fifteen minutes after that that Cooky came out in the saloon. At that time I had come in from the back end of the bar and was standing talking to Pete, and could see Cooky through the glass on the bar. Pete said, "Cooky, this lad doesn't want to 589 pay until he makes sure it is alcohol." I said, "That's right. I have the money, but you know what the arrangements were last Saturday. I was supposed to know and examine every can. If I go back without alcohol this time, after bringing that one load back, the boss will give me the run around," or words to that effect.

Pete said to Cooky: "Where did you park the car, Cooky?" Cooky said, "Just around the corner. Can I bring it to the garage and let this fellow look in the automobile?" That is what Pete said, and Cooky said, "What is the use of doing that? It's alcohol. Tell him it is alcohol and let it go at that." I said, "Tell me where the car is and I will go and see if it is alcohol, and if it is, I will

come back and pay you. You can keep the keys." Pete said, "You go down to the car, half a block and turn to the left, and Cooky and I will drive our car right behind. You can look at the stuff and then pay us off."

So Walter Hort and Peter Hodorowicz got in their car in front of the saloon and drove around the block west, I believe, and then half a block to the south is where my car was parked with reference to where the still was located. I walked down that far and when I got to my car, Pete had driven the Chrysler up to the rear of my car and gotten out and was unlocking the rear compartment of this coupe of mine to open it, and there were the ten cans. I began to reach for one of the cans and Pete said, "Grab this one, it will be easier." As I started to unscrew the cap, the alcohol bubbled up and Pete said, "You have enough alcohol there to tell what it is." I rubbed my hand on it and smelled it and said, "That's it. It is my turn to pay off."

Walter Hort was in the car, he had never gotten out of the car. I said, "I will pay you off now." I got to the rear compartment of Pete's automobile, the back seat. Pete was still standing by the front door of his automobile.

I hand him five twenty dollar bills. These bills I had 590 gotten from Investigator Smallwood with some in Fort Wayne. Investigator Smallwood was afterwards killed in an automobile accident.

Pete took my five twenties, reached in and laid five one's on the back of the front seat and said, "Five to you."

I took the five in, and as I was putting the five in my pocket, Pete got in the front part of his automobile in the driver's seat.

In the meantime, I got my badge out and said, "I am a Federal Officer. You are under arrest." There was not much said monfentarily there. Pete finally turned to Cooky in the front seat and said, "I don't think he is a Fed. I think he is a highjacker." I told them they were not doing the talking now. I wanted to go to Hammond, because I did not know where I was in Chicago, and had lost contact with Inspectors Farner and Smallwood. Pete said, "If you are really a Fed, let's drive to the jail." I said, "Let's go." We got over to the Roseland police station, and there was no turnkey there. There was a lad that evidently had custody of the keys. I told him to unlock the cell door and put them in. Then I remembered they had my five twenties, so I pulled out Pete and searched him and the five twenties were gone. Then I searched

Walter Hort and found no money on him. We locked him back up and I started upstairs.

As this was going on in this lockup, I had seen a lot of WPA workers coming in, putting their shovels and things down. As I was going upstairs to the upper part, one of the workers followed me and said, "I saw that little fellow throw something over in the middle cell when you were searching the other fellow." So I went downstairs again and found my five twenties in a little knot in the middle cell. The end cell was occupied by Hodorowicz and Cooky together. There they were all doubled up in a knot. Then I went out to get in Pete's Chrysler car and he had thrown the key away, so I got another automobile and told this man to,—I showed him the address of this saloon and told him I knew I could find my car if I got over there.
591 He said yes, he knew where it was, but he didn't care about going down to that place. I said, "Well, take me near it."

So the WPA worker drove me over and my car was still in front of the saloon on the street. I found my car with the same load of alcohol. I drove around until I located South Michigan and found Investigators Farner and Smallwood, where they were waiting in the same place, and went back to the jail.

Following that, Investigator Smallwood took over control of the case. It was really his case.

After that I saw Peter Hodorowicz and Walter Hort after I contacted Investigators Farner and Smallwood, I took them over to the Roseland jail and I saw them over there again. I talked to them there some, after that we took them to Hammond, Indiana. And after they were taken to Hammond they were brought back to Chicago and to United States Commissioner's Walker's room. I think they were released in Hammond by Commissioner Dewey, and I recall we thought we were taking them to the nearest Commissioner, because we crossed the State Line, anyhow, the complaint was signed before Commissioner Walker and they were either re-arrested and then brought before Commissioner Walker. I recall the day of the case being on before Commissioner Walker. Peter Hodorowicz, Walter Hort, myself, and investigator Smallwood were present there on that day. I don't recall whether investigator Farner was there or not—and the Commissioner, of course, and the attorney from the District Attorney's office. I could not tell which one was from the District Attorney's

office, not before the Commissioner. I believe I had met Mr. Glasser just around that time. I don't recall whether Mr. Glasser was present at the first hearing or not. I don't know Mr. Kretske. (Here defendant Kretske was asked to arise.) I don't know whether he was or not,—sorry.

I testified before the Commissioner that day. My testimony to my knowledge, did not in any way, in any material way, differ from the way I just testified here now. 592 Peter Hodorowicz and Walter Hort were bound to the District Court to await the action of the Grand Jury. I appeared before the Grand Jury in this District and gave testimony on June 24, 1937. Mr. Glasser represented the Government, that was the June 1937 Grand Jury. The story I told that Grand Jury did not differ in any material way with the story I have related here regarding this offense.

I was asked some preliminary questions by Assistant United States Attorney Glasser before I started to tell my story (here witness identifies defendant Glasser). After I left the Grand Jury room I went to Fort Wayne. I was stationed in Chicago at the time but I was in Fort Wayne for my annual leave. After July 3, at the expiration of my annual leave, I returned to Chicago and worked as a special investigator in Chicago from that time until December of 1937, when I was transferred to South Bend, Indiana, where I remained until July 1, 1938 and I have been in Fort Wayne since.

I do not know what happened to that case after I testified before the Grand Jury. I was never notified or called to give my testimony in any court subsequent to that time.

Cross-Examination by Mr. Stewart.

To my knowledge when I was told to tell my story before Commissioner Walker no one prevented me from telling the truth, the whole truth, and nothing but the truth. When I went before the Grand Jury, after a few preliminary questions, I was asked to tell the truth, the whole truth and nothing but the truth, and that is what I did. I got the idea that I could buy alcohol at an honest decent hardware store like the Hodorowicz' when special investigator Smallwood told me that they were handling alcohol, to go down there with this other fellow and introduced me, and tried to buy some. When I was out in Indiana before Commissioner Dwyer out there, I saw other people

there connected with the defense. As I recall, I remember a man by the name of Jim Flood, was there. I think 593 his name was Flood—Short, Jim Short. He was related in some way to Pete Hodorowicz, I believe there was some bondsman there at the time. I don't recollect whether Frank Hodorowicz was there or not. I was not acquainted with Frank Hodorowicz at that time.

If Frank Hodorowicz was there and talked with that agent in the case, Ben Smallwood, I would not say now from my memory, whether any such conversation happened. Before I went on the stand, I read over my report. That was to bring all these details back to my mind. There isn't anything in my report about Frank Hodorowicz talking to Smallwood out in Indiana. As I recall the bond of these people I arrested were \$10,000.00 out in Indiana they were fixed at \$10,000.00 I believe. My recollection is that the hearing before Commissioner Dwyer was very shortly after the arrest. I cannot tell you whether or not the defendants were held without bail after the arrest until they were brought to the hearing.

I cannot give any explanation as to why, after they were discharged in Indiana, it was ten days before any complaint was sworn in Judge Walker's office. I can't recall whether I swore the complaint in Judge Walker's office or not. I did my work which I have told you here and I contacted Smallwood, from there on Smallwood was more or less in charge. If he came here and recommended a \$1500.00 bond instead of a \$10,000.00 bond, I would not know anything about why he did it. I would not know anything about his conduct in the case. Who he talked to, or what he said. All I know is that I was doing my best to represent the Government in an honest way, and tell the truth. That is right. The man known as Cooky is Walter Hort.

Redirect Examination by Mr. Ward.

I am told that Peter Hodorowicz and Walter Hort I am testifying about have testified in this case.

(Witness excused.)

594 WALTER J. DEVEREUX, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Walter J. Devereux, I am a special agent of the Federal Bureau of Investigation of the Department of Justice of the United States. J. Edgar Hoover is head of the Federal Bureau of Investigation of the United States, his office is in Washington, D. C. I am connected with the Chicago Field Office since 1932, I know all the defendants in this case. I have been in charge of this investigation representing the Department of Justice since its inception. I first operated under the direction of D. M. Ladd, then under the direction of W. S. Devereux, agents in charge of the Chicago Office. That investigation has been under my direct supervision as a special agent of the Federal Bureau of Investigation. In the course of my investigation, I have had occasion to talk to a great number of people. I have had occasion to look into the disposition of the case of Peter Hodorowicz and Walter Hort.

Mr. Stewart: We will stipulate, whatever the records says, subject to any correction.

Mr. Ward: I will withdraw the witness. It is stipulated that the June Grand Jury of which Edward E. McBride was the foreman and Haight C. Getsky was the secretary was in session between June 7, 1937, and discharged July 1, 1937; that the minutes of the Grand Jury kept by the secretary and in his handwriting contain an item which is No. 25, described by the witness Morgan, as being a number which indicated the numerical order in which cases were presented to the Grand Jury, the number being 25, the case being United States *versus* Peter

Hodorowicz, Walter Hort, the violation being Section 595 1181, Title 26, U. S. Code; the agents and investigators being Smallwood and Donahue, Assistant United States Attorney D. Glasser, the date presented being June 24, 1937; the witnesses appearing before the Grand Jury being Mr. Donahue and on June 24th a true bill or indictment was voted and at the request of Daniel Glasser, Assistant United States Attorney, this indictment, this true bill was withdrawn and passed to the next Grand Jury, July 1st, 1937.

The Court: The record shows it is so stipulated.
(Witness withdrawn.)

RALPH SHARP, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Ralph Sharp, I live at 5752 South Racine Ave., about ten years, I am 22 years old. In 1935 and 1936 I lived at the same address, my father's name was Ralph Boguch. At that particular time I lived at the same address 5752 Racine. I know Louis Kaplan around eight years. The first time and place I met him was at one of his salesrooms on Ogden and Kedzie. My dad was working for him. Kaplan was selling Nash cars there and I walked in the sales room on Ogden and Kedzie. I don't know if that is near Troy Street, I couldn't tell you, it's around Kedzie, a couple of doors away. My father knew Kaplan. I know that because he talked to him and he worked for him and I used to see him talk to him. I used to work around a still. I know what a still is. The Louis Kaplan I speak of is the defendant (indicating).

I had something to do with a still located on Western Avenue. It was in the year, end of 1935, and the beginning of 1936. I know Victor Raubunas. I have known him about five years. I know Adam Widges. I have known him around four or five years. I know Raubunas and Widges were partners in this still on Western Avenue. I used to set the mash at that still once in a while.

596 No one but the workers would be present. I don't know their names, they went by nick-names. Once in a while I would see Kaplan there. When there was trouble he would come in. If something would go wrong, I went to find out things. Anybody would get in touch with him who would not have nothing to do during the day would get in touch with him. I first started to work in the Western Avenue still the end of 1935. I couldn't say exactly what size that still was. It was operated by coal and coke. I don't know anything about the coal, how it was purchased, or who purchased it. They always said it was the best still they ever had. I worked there about five months. The fellows that owned it, Louis and Victor Raubunas and Adam, said it was the best place they had. I worked there five months. It would be hard to say how

many hours I would spend there on each day. I would work until there was nothing else to do. I would see Kaplan frequently, every week or so. I was paid for working there. Louis Kaplan paid me, \$40.00 a week. Whenever they would have money, they would pay me I guess. I would have to see him. Someone seized the still. I don't know, what happened to that still. I don't know when it was, in 1936 I think. I don't recall the month. I was arrested on or about January 19th, 1937 at Spring Grove, it is near the border-line of Wisconsin. I would say around 60 miles or so from Chicago. I was working there for a still. I would say I had been working there on that still about two or three months. Louis Kaplan had something to do with that still. I guess he was the boss, he used to give orders. He would ask us to do things and we would have to do them. He would ask me to set up the place or deliver stuff. The place where the still was located was a brick building, it used to be owned by, I think, the Wieland Dairy or Borden. It was two stories high, it covered about two lots or three. It was a big still. I don't know how large though.

597 It was twice the size of the one at Western Avenue.

There was a fellow by the name of Lincoln Rankin, I think his name was, when I was arrested, who was arrested with me. I know a man named Joe Cole and one named Louis Pregoner, I don't think I know a man named Farber. I don't know a man named Ness. While I was working at this Spring Grove still, I used to sleep at Joe Cole's place, summer resort, sort of. That was about five miles from the still proper. I worked both shifts day and night. I worked about twelve hours. I never saw Kaplan out there in that still at any time. I saw him at the place where I slept at Joe Cole's tavern. It would be hard to say how often I would see him there. Maybe he would be there in the day time, I would be working there. I saw Raubunas there, maybe once a week or once in two weeks. I talked to him.

Q. Now, how much were you receiving for working there?

A. The same amount.

The Court: Q. Who paid you?

A. Louis Raubunas.

Q. Who?

A. Louis and Raubunas.

Q. Who?

A. Louis and Raubunas.

Q. Who?

A. Kaplan.

Mr. Ward: Q. How often would they pay you?

A. Well whenever they had it. It would never be on time.

The Witness: I know a man named Stanley Slesur, since I started working on Western Avenue, that is when I first met him, in 1935. He was the one that helped put it up, he was the mechanic. I saw Slessur at the Spring Grove still almost every other day. He was telling us how to put up the still there and operate it. At the time I was arrested I was sitting down by the boiler.

598 A couple of G-men walked in and arrested me. I think they took me to Woodstock, I remained there a day. Then they took us in the City and stayed there a day in jail, then I was taken to the post-office here in this building, to the United States Marshal's office. I recall being in a cell in this building. Then I was taken in front of Commissioner Walker. Lincoln Rankin was with me. No one else was arrested.

I know Anthony Horton (agreed that witness is speaking about defendant Horton). The first time and place I ever met Horton was right there. I did not have anything to say to Horton. Not a word was said amongst us. I was released on bail. I do not know how I got out on bail. Before getting out on bail, I had not spoken to anyone about that or made any arrangements about it. I don't know how much my bond was in that case. I guess Commissioner Walker mentioned something about a bond, I recall. Lincoln Rankin and I left the building together. We went home first. After I arrived at home I saw Louis Kaplan after that, around 16th and Kedzie. I guess we were told to go there. I did not receive a call of some kind. Horton, that negro bondsman, told us he wanted to see us there. He told us that after we got out on bond. That conversation took place right outside the room there, Commissioner Walker's room. Well, he says, "Louis wants to talk to you." I knew who he meant by Louis. He didn't tell me where Louis wanted to talk to me. Horton did not leave the building with us. The conversation took place between Horton and myself right outside the Commissioner Walker's office, then I went on my way. That same night I got in touch with Kaplan. It was not his place, it was on 16th and Kedzie in a

tavern. It is kind of hard to recall who was present there when I arrived. I think it was Stanley Slessur and Victor. I don't know if Victor was there, but I know Louis was there. It is kind of hard to recall who was there. The last time I saw Slessur before this meeting was before the still was raided. Maybe it was about a week. Kaplan talked to me at the meeting place. Well, he says, "Well, I told you we would get you out, there is nothing to worry about." I was still worried. I didn't say anything. I was still shocked and scared. Then time went on. I told him how the case was, if we appeared in front of the Judge or anything. He said "Don't worry you will all be taken care of." Lincoln Rankin was with me, he lived in Wisconsin. He stayed with me from the time I left the Commissioner's office until I met Kaplan.

I was in the State of Montana around 1934 and 1933. I think I do know a party by the name of Wisniewski, his name seems familiar. I had a connection with a still in Montana, I don't recall the name of the town, it was a small town. We did not get to operate the still. The Federal men seized it, I guess. After the seizure I left Montana. I went home to Illinois. The name of the town is Custer, Montana. I don't know whose ranch it was. After I was arrested in the Spring Grove still, along about the first part of February, I was arrested again. I was taken to the United States Marshal's office. I got out on bond. I don't know who signed it. I did not make no arrangements for that bond. I was taken into the Commissioner's office and the bond was set. I don't recall seeing Horton there at that time. I think he was there, I am not so sure. I went to jail first for about a day, then I came out on bond. I was kept in the County Jail, I think I got out on Lincoln's birthday, I am pretty sure. That was in 1937, two years ago. Three years ago. After I was released on bond Horton told me Louis wanted to see me and Victor, I think. It was downtown here, he took me there. It was around the corner here some place, I don't know. It was near a hotel. It was on La Salle and Jackson, it was a tavern. Horton took me over there. When I got there I found Raubunas and Louis. I mean Kaplan, by Louis.

600 They talked to me, Horton did not remain there, he stayed for a while and then he left. I did not bear the conversation while Horton was there. The conversa-

tion was quite a distance away from me. I couldn't tell what was going on. I think Horton was talking to Louis, they didn't talk long, about a couple of minutes. When Horton left the place Louis Kaplan came near where I was sitting with Victor and started talking. He said, "You don't have to worry about the case." And I asked him "Why?" and he said "It could be taken care of if I had so much money" and I didn't have that much money on me. He wanted \$250.00. He said if I gave him \$250.00 the case would be fixed. I did not have it all, I borrowed some of it, and got it. My sister, Mollie Sharp, helped me get it. She gave me around \$50.00 and I got the \$200.00. I gave Kaplan the \$250.00 at his house. When I gave him \$250.00 he didn't say much. All he said I don't have to worry now. He says I would not have to appear in court nor nothing. I told him I didn't have any more money. He gave me \$5.00 and told me to go out and buy myself a meal. I got back to the Commissioner's office, I couldn't say how long after that. There was a lawyer there for me, but I didn't hire him. I don't know who he was. I don't remember him. If he was in court I would not remember him any how. I saw Mr. Kretske there, the commissioner was there, there was some hearing there. The Commissioner came in, he started to talk. Kretske stood up and said a few words. I can't exactly recall what he said. I pleaded something, they told me to plead. And I forget what the word was, and Kretske said he don't think this is the man, and the case was dismissed.

At that time I knew I was the man wanted in Montana, but I never was arrested in Montana. No one got on the witness stand, it was not held in court. It was held in his office, in the Commissioner's office. I know 601 the Commissioner, I was in his office. Well, it was not his office. His bench, sort of where he sits at, where people can hear. It was kind of an elevated platform, a few benches to sit down. A long table in front of it.

Q. Now who was sitting at that table?

A. Kretske at one end of the table across from me, myself, and the lawyer they had representing for me. I think it was a fellow with red hair.

Q. I just can't hear you. Talk a little louder.

The Court: Keep your voice up.

The Witness: Kretske was sitting across from me. I

think it was the red head there. I didn't know his name at that time, he was sitting there. He didn't say nothing much. He didn't say a word, in fact. He was just playing with a pencil there. That is all.

Mr. Ward: Q. Did you see him handle any papers of any kind?

A. Kretske looked over a few, that is all. They were sitting down listening to the Commissioner. Not much was said. About ten or fifteen minutes it was all over.

The Witness: I left the Commissioner's office. No one talked to me after that. I think I saw Kaplan the next day, around his garage. I just went there. That is all. He talked to me. He said "See I told you you would not have to worry." That is all that was said.

After that I often talked to Kaplan about the Spring Grove case, wherever I would meet him. If it would be in a tavern, or in their sales-room, any place I would get to meet him. I would ask him how was the case, when is the case going to come up, he told me I would not have to worry about the case. I asked him why, he said, "It is on the shelf, when it gets dusty and dirty you can't see it no more, throw it off."

602 Q. What was that?

Mr. Stewart: You heard it. If you didn't hear it, the reporter will read it to you.

Mr. Ward: Just a minute.

Mr. Stewart: I object to Mr. Ward's having him repeat it.

The Court: Read the answer of the witness.

(Last answer read as recorded.)

The Witness: I was arrested after that I think, after my bond expired. I went to jail again, and I got out on bail again. My sister made the arrangements for me to get out. The still on Western Avenue was in the back of the building, 2524-34 So. Western Avenue. There was five vats and each vat held fifty bags of sugar, that is the amount you put in there with water.

The Court: Five vats?

A. That is right.

The Witness: I couldn't tell how many gallons in each vat, I would not know. I don't know what amount the still was. That still produced quite a bit of alcohol while I was there. When things were running right it would produce 100 cans a day, each can would be five gallons. It was 190 to 85 proof. I used to fill the cans up and

load the truck and pull out with the truck. I distributed the alcohol to one place, I was told where to go by Adam Widges, he used to tell me. The still produced 100 five gallon cans a day. Sometimes the mash was not ready, or something like that. You can't work, around five days steady. The still produced about 500 cans a week. I worked there for five months. I was never arrested with reference to that still. I talked to Kaplan about that still after it was discovered by the Government. It was just something to talk about, that is all. I don't recall what I said.

603 He said it was the best place they had. It was a good spot. That is about all. I did not go straight from the Western Avenue still to the Spring Grove still. From the Western Avenue still I did not do nothing. Then I went to work at Lake Geneva. I worked at a still up there for about two or three months, that was more or less my line, working around stills. My particular work was anything that was to be done. I knew when the mash was ripe to run out there, I knew all about the manufacture of alcohol. I was what you would call a good all around man with the still. I worked up at Geneva until Autumn.

Q. Did Kaplan have anything to do with the Geneva still?

A. Nothing much, if he did have anything to do with it.

Q. Did you ever see him up there?

A. No, I didn't.

The Witness: I guess Raubunas was in partners with it with Stanley Slessur. Raubunas employed me to go out there. The last still that I was connected with was located at Spring Grove. In between the start of the Western Avenue still and the end of the Spring Grove still, I did not work on any others, with the exception of the Lake Geneva. I was out of work about two months. Between the times you have mentioned. I do not know whether I was indicted with reference to the Spring Grove still, I am not notified of anything. I don't know what was going on. I didn't find out that I was indicted on the Spring Grove still. I went to see Louis a couple of times and asked him. I asked him a couple of times if I should go to court or anything like that. He said I didn't have to. I did not have no one else than Louis to ask if I would have to go to court. My sister was speaking to me about going to court. I was not asking about the removal proceedings. I was asking when I would have to go to court on the

Spring Grove case. I would meet him once a month, maybe once in two months, once a week. My sister kept pushing me, told me to go see how things are. Find out 604 if I should go to court. He told me I would not have to worry about it. That is all. He said that is all taken care of. I did not pay any money in that case. My worries were about the case that is all. I talked to agents of the Alcohol Tax Unit after I was arrested. I talked to Bob White and Deveraux and Bailey, at the office, the new postoffice. I went to the Federal Bureau of Investigation, I don't recall the day but I seen the both persons mentioned, the names here, Devereux and this other gentleman. I was called to testify before the Grand Jury in the Spring Grove case. I know Joe Cole was called to testify in the Spring Grove case. I was there at the Grand Jury, it was the end of this year, 1939. I was asked a great number of questions, I had some difficulty in getting out on bond the last time I was arrested. I know a man named Edward Dewes, I know a man named Stanley Wasielewski, I met him in Montana. They never call him by that name. They always called him Bruno. He never worked with me on any stills in and around Chicago.

Court reconvened at the hour of ten o'clock A. M. on the fifteenth day of February A. D. 1940 pursuant to adjournment.

The Court: You may proceed.

Mr. Harrington: Good morning, Judge. I don't want to do anything that may in any way be—

The Court: Just a minute; will I excuse the Jury?

Mr. Harrington: Yes, I was just going to say, I wish you would, Your Honor.

The Court: The jury may retire for a few minutes.

(Whereupon the Jury retired from the court room.)

Mr. Harrington: If the Court please: The last time I had a chance to address you was on the telephone, and on Monday, February 5th, I waited here until Your 605 Honor sent that telegram, because I wanted to address the Court personally, in reference to this Kretzke matter. I explained to the Court on January 29 that I was not asking for a continuance, and that as soon as I was through in the case before Judge Lindsay, I would be here to defend my client.

Now, on Monday, February 5th, because of Your Honor's delay, through no fault of your own, it was necessary for me to go to Judge Lindsay, and at 1:30 he forced me to

trial over there, so I couldn't appear before Your Honor at two o'clock. Mr. McDonnell appeared here, and it was my understanding while I was on trial over there, if the Court please, that Your Honor was going to give a week's continuance. I explained to the Court—

The Court: Your understanding was what?

Mr. Harrington: That Your Honor was going to give a week's continuance.

The Court: On the 29th of January.

Mr. Harrington: No, on February 5th; let me explain why.

The Court: After February 5th?

Mr. Harrington: On February 5th Judge Evans called Judge Lindsay while I was on trial, and he stated—

The Court: At my request.

Mr. Harrington: Well, I don't know at whose request,—and Judge Lindsay came back and told me that the Court was going to continue this matter for a week, with the understanding, of course, that I would be through with that case within a week or ten days.

Now, on Monday, when I was not here Your Honor first appointed Mr. McDonnell. I spoke to Mr. McDonnell, Your Honor, and because of the vast amount of work I had done in preparation, I know there was no lawyer who was appointed by the Court could familiarize himself with this case in two or three days.

606 The Court: May I interrupt? You see the appearance in this case is Harrington and McDonnell.

Mr. Harrington: Yes, sir, that is correct, Mr. McDonnell filed that. It was in his handwriting, but he was never retained, and I don't think Mr. Kretske at any time talked to him.

The Court: The Court has to be guided by what is filed.

Mr. Harrington: That is correct. I am not blaming you for that.

On Tuesday, when Mr. McDonnell withdrew, it is my understanding Your Honor appointed William Scott Stewart as attorney for this man. The only thought I have of that is this, that the week previous—Mr. Stewart—I don't know if Mr. Stewart stated under oath that his defense was antagonistic to Mr. Kretske, or rather, to the other four defendants, and asked for a separate trial. At that time I was very much concerned about the charges that had been made against me, because if they were true, I had no business in this case, representing Kretske. Your

Honor, after you heard the evidence struck that particular paragraph, that the Court was antagonistic to me.

Now, the only reason I appeared here this morning is to show I was acting in good faith at all times. My case is over today, this is the 15th of February, that was the fifth, when Judge Lindsay said when I would be there within a week or ten days. There are no dilatory tactics on my part in reference to this matter, and I want to explain to the Court this, although Your Honor explained to me over the telephone the Government had a lot of witnesses, the truth of it is the only witnesses they had were in the County Jail, and are witnesses belonging in Leavenworth or some other penitentiary, so it didn't make any difference as far as the Government was concerned, whether they were keeping them in Leavenworth or not.

607 In all sincerity I know what the Court said, because I had my court reporter here at that time, you would be glad to furnish a transcript every evening, but it is impossible for a man to do the impossible, I was on trial over there, but I appreciate what Your Honor did. The reason I stepped over here this morning was because in my last conversation had over the 'phone, I told Your Honor I would see you. I am here now, and if there was anything I said over the telephone that Your Honor took offense at, or anything, here I am.

The Court: Oh, no, I understand your position. You are battling for your client.

Mr. Harrington: And that is all, Your Honor.

The Court: I understand it very well, and it was no pleasant thing for me to go ahead with this case without you. I had known how much work you had done in this case.

Mr. Harrington: Now, I want to say this to the Court, and I want to say it in the presence of Mr. Ward, that from my investigation of this case the same thing is going to happen in this case that happened before Judge Lindsay. The Court will have to direct a verdict, from my investigation. Now, in this particular case you have this proposition, from my investigation, a lot of disgruntled clients who are turned against my client, Mr. Kretske, and everything I investigated practically had to do with his dealing with clients after he left the District Attorney's office, and not prior to that time. And if there is any way that the Court can rectify, as I contend, the wrong that has been

done to my client without any fault on my part or his part. That is what I am here today for.

Mr. Ward: I might say for Mr. Harrington, the District Attorney will not join the CIO sit-down that the State's attorney of Cook County joins.

608 Mr. Harrington: Well, you may have to, if the Court decided.

The Court: I am not interested in that.

Mr. Harrington: The only reason they joined the sit-down case was two of the main witnesses were cited for contempt of court for perjury, that was something never happened against the State witnesses before. Maybe your Honor will do it for the Government when its case is through. Is there anything I can do? As I said in my conversation over the telephone, I was going to file a motion for a change of venue because of the remarks the Court passed. I am here, but not through any fault of my own I was not here, and this is the first chance I had to appear.

Mr. Ward: For the sake of the record, why shouldn't the record show in this case that Mr. Harrington predicted so accurately when he was going to finish, he must have been psychic, because the State's Attorney quit in the case yesterday, and I am sure he didn't know that in advance, so the case would have lasted a little more than ten days.

Mr. Harrington: Judge, the State stopped yesterday, after I had finished my cross-examination of the last accomplice that had not been identified, and that was the end of the case.

Mr. Ward: You mean after you exhausted her until the point of death.

Mr. Harrington: She told the truth at the end, and the Court held her for perjury?

The Court: Never mind that, I don't care about that. I don't care anything about that. Bring the jury in.

(Jury returns to the Court-Room.)

609 RALPH SHARP, recalled as a witness, having been previously sworn, testified as follows:

Direct Examination (Resumed) by Mr. Ward.

After I got out on bond in the Montana case which I didn't know who arranged, I went over and seen Louis Kaplan, and he told me they would shoot me to Montana.

and I wouldn't have any friends out there, and that case maybe go to jail, or something. So I asked him what I should do. Well he said "You don't have to go to Montana. We can take care of it here, we have some friends and connections." I told him how is that. He said "Well I could fix the case for you if you got \$250.00." Which I did.

I went by another name than Ralph Sharp, it was Ralph Boguch, that was the name of my step-father. His name is Casmir Boguch or Charles. When I was in Montana I went by the name of Ralph Hap. I am 22 years old now.

Cross-Examination by Mr. Stewart.

I was not arrested right in the Western Avenue still. I was not arrested at all. The still was not raided when I was in there, the colored fellow was arrested right in the still when it was raided. I don't recall his name. I didn't see him after he was arrested. I was not arrested in that case at all. As far as I know the agents didn't know I was the still tender there.

I was arrested in another still at Spring Grove by two Federal men. I do not know their name. They took me first over to the local jail, then I went to another jail in the city. I did not tell the Federal Agents who the owner of the still was. I did not tell them who I was working for, they asked me.

Q. What did you tell them when they asked you?

A. Well I gave them a story.

Q. What story?

A. I don't recall.

610 Q. You tell us the story.

A. Well I forgot. It's so long.

Q. Well that was a lie, wasn't it?

A. Yes, sir.

Q. And it was a lie under which you were claiming to be innocent, isn't that right?

A. How do you mean, innocent?

Q. Well you claimed to be innocent of attending the still?

A. Well I wasn't attending the still.

Q. You were not tending a still at Spring Grove?

A. No sir, not at the time they caught me.

Q. And you didn't tell them you ever tended the still, did you?

A. No.

Q. And you told them a lie in order to not have to tell them who you were working for, didn't you?

A. That is right.

Q. You protected the people you were working for, didn't you?

A. That is right.

Q. And you were trying to protect yourself?

A. That is right.

Q. By lying, weren't you?

A. Right.

The Witness: I went to jail first before they brought me into the Commissioner's office. That was because I didn't have a bond, I was in jail a day. Then I was brought into the Commissioner's office. A negro made my bond, that is this Tony Horton. That was a bond to answer to whatever I might have been guilty of, concerning the Spring Grove still. That hearing before the Commissioner did not go on that I know of. I was never notified. Here lately I was arrested again. I was arrested when they 611 wanted to send me back to Montana. So that makes two arrests. At that time they came up to the house and took me, some men I don't know from the Sheriff's office. I think they were Federal men, they had my name on a subpoena. I was arrested on that Montana business soon after the Spring Grove case, a month or so. On that arrest I stayed in jail a day or so. And then a bond was made for me to appear before the Commissioner in that case. I do not know the amount of that bond. I do not know the amount of the bond I was on in the Spring Grove case. When they arrested me on the Montana case they told me it was concerning some alcohol where I had been arrested in Montana. I was never arrested in Montana, I didn't tell them I was guilty in Montana and they had the right fellow. I told them I was not the fellow. I lied to them. I lied to them trying to protect myself. Before they got me out on bond I told them if I am the fellow I might as well go back to Montana. I told it to the fellow inside the post-office there in jail, marshal's office, if they want me I will have to go back, because they sent a telegram there, and they had pictures of me of some sort and said I am the fellow. Well I told them if I am the fellow I might as well go back. I did not change my mind since I told you I lied to them, but that is the words I told them. I said if I am the fellow I might as well go back. They sent for my pictures, I must have been the fellow. It has

been so long I can't say how long it was before I went back into the Commissioner's office for a hearing, I don't know. It has been so long ago that is the trouble. When I came up for my hearing I did not get a continuance, they dismissed it right there, which I am pretty sure of that. If you told me that the record shows I got a continuance, I would not say the record was wrong.

On the next hearing I came back and there was a lawyer for me, I was not over to that lawyer's office, I cannot describe him. Nothing has happened over night to refresh my recollection so I can't tell you his name. I would not know him if I saw him. That was dismissed after I got the continuance when the lawyer was there, and I went about my business. I did not give a bond for the Spring Grove case, somebody gave it for me, I am on my own bond. I was still on the bond that was given for me in the Spring Grove case when I was dismissed before the Commissioner.

Some time last year I first told somebody connected with the United States Government that I tended the stills I have told you about here at Western Avenue and Spring Grove. I do not know what month, I told it to Bob White, the Government agent. I was in the new post-office when I told him. He asked me to come over there, I was home when he asked me, he was driving by and he came upstairs and he told me to go down to the post-office, he wanted to talk to me. When he was driving by and stopped at my home he did not ask me questions about tending stills. When I got up to the post-office I found out that the others that were mixed up with those stills had also been telling the Government, and I knew that they would tell about my part of tending the stills, so I might as well tell them. No other Government man ever bothered me because I was out on bond. I lied to them once and they left me alone.

The only Grand Jury I was before was the Grand Jury that was investigating Mr. Glasser, and Mr. Ward was the Government attorney, and he questioned me. That is the first time I told any Grand Jury about who my employers were and about how I tended stills. I was out on my own bond before I went before the Grand Jury for Mr. Ward in this investigation of Mr. Glasser. First I was put in jail then they let me go out on my own bond, that was just after the 4th of July, I think it was on a Tuesday. I stayed in jail two days. They took me to the post-office

from here, and from there, I didn't know what it was all about, and they took me to the County Jail, and then my sister got me out on bond on the **Spring Grove** case.

613 After I was out on my own bond the agent drove by and asked me to come and see them, that was after I was out on my own bond. And after I learned that the others had told on me, and after I knew Mr. Kaplan was in a lot of trouble. I knew that and I knew he couldn't help me any more with the bond. I was afraid I might have to go to jail because I couldn't furnish bond. In order to help myself, so the Government would help me, I started to tell them these things. When I am coming in here to testify I am doing it just to try to help myself out of that trouble. The Spring Grove indictment is pending against me now. Right after I got out on bond I told Mr. Ward I was guilty in the Spring Grove case, it was in July of last year. I didn't talk to Ward first, I talked to one of his men. That was Bob White, a Government agent. It was the end of last year that I first told Mr. Ward. They haven't prosecuted me for that since I told them I was a still tender. They haven't made any effort to send me back to Montana even though I told them I was the right fellow. I have told Mr. Ward very freely that I am the man they want back in Montana. The case has been dismissed, I don't know if the indictment has been dismissed. If I have to go back, I have to go back. I am naturally hoping by testifying here, I will help myself out of that trouble.

Redirect Examination by Mr. Ward.

Q. Mr. Sharp, you don't know if the records of the District Attorney's office kept by Kretske and Glasser showed—

Mr. Stewart: What's the use of asking him what he does not know.

Mr. Ward: You have asked him.

The Court: Objection overruled. Let us hear the question.

Mr. Ward: —showed a notation on there that the reason they didn't send you back to Montana was because you were indicted here, and there was an indictment
614 pending, you didn't know anything about that, did you?

A. No, sir.

The Witness: After I talked to Bob White, the special investigator, and after I talked to him there were some arrangements made, and I was permitted to sign my own bond. I have been here in the District ever since ready any time the Government wants me. Any time you want to start your case or prosecute me I am here in the District.

When I was working on that Western Avenue still it was part of my duties to haul sugar to that still. I got the sugar from different places, I remember a sugar company by the name of Cusemano Sugar Company, I hauled sugar from there practically every day.

Q. And what, if anything, would Kaplan do with reference to you hauling the sugar to the Western Avenue still?

A. Pardon?

Q. What if anything would Louis Kaplan do when you would be hauling the sugar from the Cusemano Sugar Company to the Western Avenue still?

A. Well, he used to meet me at Cusemano's store once in a while, that is about all, he used to once in a while.

Q. Would Kaplan meet in Cusemano's sugar store with you?

A. Yes, sir.

Q. Do you know what is meant by a man tailing you?

A. Yes, sir, someone following me in the back, and telling me when it is all right to go in, and when not.

Q. And in that business there, you—running alcohol, you have what is called a tail?

A. Yes, sir.

Q. And that means a man is sort of following you to keep his eyes open for agents, isn't that true?

A. Yes, sir.

615 Q. Now, of course, when the agents arrested you, Ralph, you were found right in the still, weren't you?

A. Where do you mean, in the Spring Grove?

Q. Yes, sir.

A. Well, it was away from the still.

Q. Well, it was right in the building?

A. Yes, sir.

Q. And you heard a tap on the door, and there wasn't any chance of you or Rankin getting out, so you were caught right in the place, isn't that true?

A. Yes, sir.

Q. Did you ever talk to Louis Kaplan about his being indicted in the Spring Grove case?

A. No, sir.

Q. Did he ever mention that to you?

A. No, sir.

Q. Do you know that Kaplan was not indicted in the Spring Grove case?

A. I don't know anything about it.

Q. He never told you anything about that?

A. No, sir.

Recross Examination by Mr. Stewart.

When I was talking to one of their agents some time last year I first told the Government about that sugar business. The first time when I started doing the talking. Before I started doing the talking some time last year, I didn't furnish the Government with any information against myself or others I was dealing with in the alcohol business. In other words, I stood up.

Q. Now, since you have been talking, or since they allowed you out on your own bond, when was it you came over here with the agent when Mr. Kretske was trying a case so the agent could point him out to you last June?

Mr. Ward: I object, it is assuming something this 616 witness did not say, it is not in evidence.

Mr. Stewart: Your Honor, that is not fair to a cross-examiner, I have a right to assume what I know to be a fact.

The Court: If it is covered on direct examination. Your question is when did you come over here to point out—read the question.

(Question read.)

The Court: That is assuming an awful lot. Objection sustained as to that. Re-frame your question.

Mr. Stewart: Will Your Honor hear from me on that?

The Court: No, sir.

Mr. Stewart: You are not going to limit me?

The Court: You are assuming an awful lot not in evidence. Ask your question, you can obtain the same information—

Mr. Stewart: Well, I will divide it up.

Q. You came over to this building with the Agent White?

A. Yes, sir.

Q. And you came into one of these court rooms?

A. No, sir, he didn't have to point out Kretske to me. I knew him all the time.

Q. Well, what was the purpose of your trip, then, if you knew him?

A. My case was on, I was involved in one of those cases of the Spring Grove.

Q. When was that?

A. When he had a case going on here with Lincoln Rankin and another—

The Court: What Judge?

A. I think Judge Wilkerson.

The Witness: I don't know if Mr. Kretske at the time was the United States District Attorney. He happened to be in the court room. That is the first time I seen 617 Mr. Kretske since my trouble then. A good year had elapsed between the time I had seen Mr. Kretske and my removal trouble. I had no particular occasion to keep that in my mind, about Mr. Kretske being before the Commissioner; I can't even remember what my own lawyer looks like.

Redirect Examination by Mr. Ward.

I didn't hire him, I made no arrangements to hire him. If he was there as a lawyer in the Commissioner's room I didn't know anything about him.

Recross Examination by Mr. Stewart.

I didn't hire Mr. Kretske there.

Redirect Examination by Mr. Ward.

I knew that Mr. Kretske was prosecuting for the Government.

(Witness excused.)

EDWARD T. NEWELL, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

My name is Edward T. Newell, I am a special investigator, Alcohol Tax Unit, for a little over three and a half years. Part of the time I have been located at Chicago, previous to that Indianapolis. I am licensed to practice law. I have practiced law. I participated in an investigation regarding a still at 6949 Stony Island Avenue. I went out there on the morning of December 6th, with investigator Dobbins, about 5:00 A. M., and we went there every morning about 5:00 and stayed until about 9:00 and every evening about 4:00, and stayed until about 8:00.

On December 8th was the first time I saw any one go in the rear door. We were watching the rear door, we could smell alcohol in the alley behind this garage, nearly every day I was there. I was there from December 6th until December 31.

618 On December 8th I saw Clem Dowiat go in in the evening, just about 7:00 O'Clock, and he was in there, I think, about forty minutes, and he went in there nearly every day between December 8th and one or two days after Christmas. The Clem Dowiat I saw was Frank Hodgiewicz' nephew. And December 10th was the first time I saw Swede, that is Carl or Elmer Swanson, go in. He went in about 7:15 in the morning, and he went in nearly every morning around 7:00 O'Clock. I was in the garage just across the alley from where the still was located. One morning I saw Mr. Joppek go in with Swanson. And another morning another man went in there. I was unable to identify who he was. I had the car numbers, but I can't recall them without referring to my notes.

On December 31, we went in there with a search warrant, and got 1,000 gallons re-cooked and 40 cans of moonshine, and miscellaneous re-cooker equipment. There was a re-cooker still there. There was no moonshine still there. Swanson would go in the morning, he usually came in a Black Ford Coach. The car would go in and stay in about forty minutes or so, and go out. He was heavily loaded, but it was awful hard to tell—he would get out

of the car and then open the door and drive in, then close the doors. Then he would come out and close the doors and drive out. On one occasion I followed him to 3658 West 111th Street, where we afterwards seized 705 gallons of re-cooked alcohol. When we seized this re-cooked alcohol there was a farmer there, and that was the place, a barn in the rear of a Sinclair Filling Station, where Clem would drive in. After he would leave the still on Stony Island, he would drive into this shed at 3658 West 111th Street. I know what is meant by a tail, I had a tail on Swanson. Mr. Lancaster done most of the tailing, he followed him from the early part of December until the still was knocked off, December 31st, every day nearly, that means the still was seized or discovered. After this still was seized by the Government, I made a report.

619 (Here witness explained what reports he made which became Government records of his activities before and after a still is seized, how the reports are prepared, by whom, by whom signed, and any agent that participates in any way in the investigation signs the report.)

I don't know of my own knowledge whether or not that particular report was forwarded to the United States Attorney's office. I understand they have them often.

Mr. Stewart: Just a minute. I object.

Mr. Ward: You don't forward it, that is not part of your duty. All right.

Examination by the Court.

Q. What do you do?

A. I just turn it into the office.

Q. What office?

A. To Mr. Casserley or his aid, Mr. Harrington, or to Mr. Ritter's office.

Q. But it frequently happens when you come over and talk to the Assistant United States Attorney you see a report in his hands sometimes that you did turn into the Alcohol Tax Unit, is that right?

A. Yes, sir.

Q. And you discuss reports with the Assistant United States Attorney who is going to present the case to the Grand Jury, isn't that right?

A. Yes, sir.

Q. Now, subsequent to this seizure of this Stony Island Avenue still, did you discuss that case with any Assistant United States Attorney?

A. No, sir; yes, not that specific case, I went—

Mr. Stewart: That answers the question, Your Honor.

620 The Witness: I was not called to the Grand Jury to testify in the 6949 Stony Island Avenue still case. I tried to arrest Swanson once but he got away. I think the day this still was taken I went out with another investigator, and I saw Rocco and Swanson get in a car at 109th and Michigan, they came out of the Rendezvous Tavern on the corner, I followed the car and went over to Rocco's house. Rocco started to get out, and I pulled along side and got in the car with Swanson, and I told him I wanted to talk to him. He started driving away, and we drove east on 121st street, and on the corner of Wentworth Swanson opened the door on his side of his car and jumped out and started to run, and let the car rolling, and got away, and I stopped the car, and when I stopped the car and got out he was two blocks up the street, I saw him after that but I didn't arrest him. He came in and gave himself up. I did not follow Victor Joppek at any time or to any place. I just saw him come out. I think it was, I am not sure what day, he came out one morning with Swanson, out of the back door of the still. Lancaster was not with me at the time. I did not arrest Dowiat. I saw Clem Dowiat go in and leave the place about twelve times. He came at the same time within an hour every day. He came as early as 6:15 and as late as 7:30, between that hour in the evening, Dowiat did. I know special investigator Bailey. He was with me watching this 69th and Stony Island Avenue still. I think he was there off and on for about two weeks, probably, what it is I can't off hand guess. I know he was with us about two weeks.

Cross-Examination by Mr. Stewart.

My boss is Yellowley.
(Witness excused.)

RAYMOND L. LANCASTER, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

621

Direct Examination by Mr. Ward.

My name is Raymond J. Lancaster, I am a special investigator for the Alcohol Tax Unit, since September 1935. I have been in the Government service going on eleven years.

On November 26, 1937 I was making certain observations in the vicinity of 124th and State, that was in conjunction with an investigation which I was making regarding alcohol tax violations. I was in company with special investigator, Leschin, and we were working on the Hodorowicz's, investigating the Hodorowicz's. On that day about twelve o'clock noon, I was in company with special investigator, Leschin, and I observed a car with an Illinois license plate, that was parked on State Street, near 124th; at about 2:30 P. M. I observed Swede Swanson and Patsy Rocco come from across the street. I didn't see where they came from and they entered the Ford coach, we followed them to East Chicago where Patsy Rocco entered a club and Swanson remained in the car. After that we followed them to the Hodorowicz hardware store which is located at 11823 Michigan Avenue, where Patsy Rocco entered. After a short time he re-entered the car, drove to a bakery, stopped, and then left. We were not able to follow him any more. I saw him the next day when I observed him enter his car which was parked across from the Hodorowicz hardware store. He drove to State and 124th Street where he parked and entered the premises. I couldn't ascertain exactly what premises that was. Later that day I saw Anthony Hodorowicz. At about 5:00 o'clock in the afternoon we were watching the home of Swede Swanson at 18 W. State Street, when he came out, entered his car and drove rapidly to in front of 6945 Stony Island Avenue, which is front of the Curley Young garage. Parked his car, entered the garage, came out and he appeared to be looking for someone. Later he went to the sales and service which is just south or north of the Curley Young garage, and met Tony Hodorowicz. Swanson drove his car into the garage and had a tire fixed. Tony Hodoro-

wiez and Swede Swanson then went to a saloon on 622 Stony Island near 69th, drank beer, came out, entered a 1937 Ford coach, drove to a vacant lot which is just south of 6949 Stony Island, where Hodorowicz parked the car and both men got out. They went back to Curly Young's garage and they went in and out several times. Then Swanson and Hodorowicz later walked into the still room, in the rear of 6949 Stony Island Avenue, they remained there several minutes and came out. Later they went back into the place where the still was found. We detected the odor of alcohol coming from the building in which the still was found. I didn't see Joppek at the plant at Stony Island. I did see him on December 16, 1937 when he was tailing a car, that is, following Swanson's car which was being driven by Swanson. Both cars were driven to in front of 4816 Todd Avenue, East Chicago, where they entered the premises. Patsy Rocco's car was there, it was also parked in front of the premises. Victor Joppek, Patsy Rocco and Swanson came from the premises and entered Rocco's car, they went to a restaurant and came back. Victor Joppek got out of the car, got into his own car and drove to 505 East Chicago Avenue, where he parked his car and disappeared in between two buildings. I later saw him entering a small door in the alley entrance in the rear of 505 West Chicago Avenue. I later with investigator Dobbins detected the odor of cooking alcohol coming from the place that Joppek had entered. Later I returned and found a still had exploded and killed a man. I didn't go in the garage and see. They wouldn't let me. I don't know if that's the same Victor Joppek mentioned by agent Goddard. I don't know anything about that.

I later submitted a report to the Alcohol Tax Unit. I spent approximately two months investigating the Hodorowicz crowd, day and night. I was dressed in an old pair of pants and had on a blue shirt, blue sweater and jacket and cap.

I know the defendant Glasser. I do not know Norton Kretske. The first time I became acquainted with 623 Glasser was when I testified in the Grand Jury in regard to Clem Dowiat, Swede Swanson and Tony Hodorowicz. I understand an indictment was voted but I wouldn't say positively. I was never called to court to testify in that case. Glasser never spoke to me about the case after I appeared before the Grand Jury and testified. I know Bailey, he participated with me in the Hodorowicz

investigation. Bailey and I arrested Clem Dowiat and Anthony Hodorowicz in front of the vacant lot which is directly south of 6949 Stony Island Avenue. At about 10:30 A. M. after special investigator Bailey and Newell had served a warrant at the still, I didn't participate in the serving of the warrant,—with special investigator Leschin I sat on Stony Island, and about 10:30 A. M. I saw Clem Dowiat with Tony Hodorowicz, driving a V-Model Ford coach, bearing license 1937 plates, 1,541,058, driving north on Stony Island, and that Clem Dowiat parked the car directly in front of Curly Young's Garage, Clem Dowiat got out from the car and went into Curly Young's Garage, stayed there a few minutes and came out, and Tony Hodorowicz got out of the car, and Clem locked it.

They then walked south on Stony Island, and I told special investigator Leschin to go and notify Mr. Bailey that Clem Dowiat, the driver of one of the cars, and Tony Hodorowicz were in the vicinity. I then drove up the street and parked, and turned around and parked directly in front of a vacant lot at 6949 Stony Island, the vacant lot just south of the building.

Special Investigator Leschin went in the still side to notify Special Investigator Bailey. I sat in the car, and Tony Hodorowicz and Clem Dowiat proceeded south, and as they approached my car I saw they were going to walk right on past, I got out of the car, and advised both men I was a Federal officer, and placed them both under arrest, told them they were both under arrest, and I showed them my badge. I detained the men long enough for Special Investigator Leschin and Bailey to come from the still site, and I arrested Clem Dowiat and Mr. Bailey and 624 Leschin had a struggle with Tony Hodorowicz. I was there when the struggle started. When I told Hodorowicz I was a Federal officer, and placed them under arrest, and showed them my badge, why they both continued to walk south on Stony Island, and I grabbed them both by the arm, and both of them started to pull away, and I continued to hold them by the arm, although they were struggling, and at that time Mr. Bailey and Mr. Leschin came up, and they grabbed Tony Hodorowicz, and Mr. Bailey showed him his badge and told him he was a Federal officer. And at that time Clem Dowiat, who was struggling with me, and Tony Hodorowicz started to

struggle with Mr. Bailey and Mr. Leschin. And at last he broke away and ran, and later I saw Mr. Bailey and Mr. Leschin returning with Tony Hodorowicz. But I kept Clem Dowiat under arrest.

I was in possession of all this information since November 1937. I never had a conversation with Mr. Glasser. He never called me over to his office to talk to me about this case.

I am not under supervision of Mr. Yellowley, he is not my boss, I am from the Eighth district which includes Michigan and Ohio, and I was sent on a special assignment over to Chicago. On this assignment Mr. Leschin was my boss. He had an assignment direct from Washington, and I was assigned to work with him along with several other men.

Cross-Examination by Mr. Stewart.

During my investigation I didn't go in the store of Frank Hodorowicz that he ran at 11823 South Michigan Avenue. I never heard of him having any other business outside of bootlegging. His business was between bootlegging and the store. His associates in the bootlegging business were Tony Hodorowicz, Clem Dowiat, Pete Hodorowicz, Patsy Rocco, Swede Swanson and Victor Joppek. I think I have named them all. As a matter of fact Frank Hodorowicz and his brothers have constituted what we sometimes refer to as a mob. I can't say they had one of the biggest businesses in the country. 625 It was not a small business, they did a large business.

At that time my headquarters was in Cleveland, Ohio, when I first came here. When I went before the Grand Jury Mr. Glasser was the Assistant District Attorney in charge of the matter that was being presented at that time. He asked me to tell my story to the Grand Jury, he didn't interfere with me. He didn't stop me from telling anything I knew. I had some little experience as a witness. That goes along with my work, being on witness stands. I appeared as a witness when Frank Hodorowicz and part of his crowd were on trial here before Judge Woodward. Mr. Glasser examined me and Mr. Hess representing the defendants cross-examined me. The questions, though, in that trial before Judge Woodward, were limited because of the fact that there was a particular indictment on trial, so I didn't tell this whole story that I am telling you. I

don't know if that is because of a limitation placed by the law. I answered the questions that were asked by both sides. I was working on Hodorowicz at the time I followed these different people and observed these different places. It was more or less a confidential matter that I was working on. I saw Frank Hodorowicz and Pete Hodorowicz and Clem Dowiat contact a couple of agents, named Roseboro and Kominakis. I had known Roseboro before. I had worked with him in Cleveland, the other one I didn't know. Roseboro was a colored man, he did not know that I was going to be in that neighborhood that day. He didn't know I was there at all, I told him afterwards that I saw him there. I told him possibly a month after. He and I were not working out of the same office. I wasn't working out of the office here, my reports were more or less confidential. Our district knew it, and some of this district knew. I was not reporting to Mr. Glasser as I went along. When I observed investigators Roseboro and Kominakis and saw that they were out there on official business, I didn't leave.

626 Q. Well, I will ask you to listen to these questions that were asked you before Judge Woodward on that subject.

“Q. At 115th and State you discontinued your observation of the car?

A. Yes, sir.

Q. Which way was the car traveling then?

A. It was traveling up State Street.

Q. North?

A. No, south, that would be going south.

Q. Which way were they traveling?

A. South.

Q. What time would you say that was?

A. Oh possibly around, oh around 11:50 in the morning.

Q. 11, what?

A. 11:50 A. M. or 11:55.

Q. Then which way did you turn, east?

A. We turned west.

Q. And then continued and turned north after awhile?

A. I don't recall.”

Q. Now, Mr. Lancaster, what I have just read you is preliminary, have you that in mind? I want to make sure you understand.

A. Yes, sir.

Q. What part of the observation I am talking about.

A. Yes.

“Q. Then continued and turned north after awhile?

A. I don't recall where we went, we just drove, and went on our other business.

Q. Any particular reason why you left that car at 115th & State?

A. Well, we decided that investigator Roseboro and Komanakis was out there on official business.”

Q. Did you make those answers?

627 A. Yes, sir.

Q. And that is why you left, wasn't it?

A. Yes, sir.

Redirect Examination by Mr. Ward.

I testified as a witness in the Frank Hodorowicz, Peter Hodorowicz and Clem Dowiat case. I knew in that case that Frank Hodorowicz and Mike Hodorowicz and Pete Hodorowicz and Clem Dowiat were charged with possessing 25 gallons of alcohol on December 19th, 1937. I didn't see the indictment, I don't remember the case and then I know there was another case against them at the same time. Tried one right after the other in which Frank Hodorowicz, Pete Hodorowicz and Clem Dowiat were charged with possessing 35 gallons of alcohol.

Recross Examination by Mr. Stewart.

When I was before Judge Woodward and the Jury, I told the truth. I didn't help convict Frank Hodorowicz with a pack of lies.

Redirect Examination by Mr. Ward.

I know that the notes I made out there in the investigation of this crowd were afterwards made part of a jacketed report. I saw this report before today in the District Court in Mr. Glasser's hands when we had a trial of Frank Hodorowicz and Clem Dowiat.

(Witness excused.)

EDWARD K. GILBERT, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Edward K. Gilbert, I am an investigator, Alcohol Tax Unit, since 1934. I have been with the Government since 1931.

628 I know a person by the name of Walter Kwiatowski. I participated in an investigation involving him, at 7915 Saginaw Avenue, that was a two story frame residence with a basement. South of this residence was a three car cement block garage, with tunnel from the garage leading into the basement of the house at 7915 Saginaw Avenue.

(Documents 71, 72 and 73 marked for Identification.)

Exhibit #72 is the rear of the house at that address and also the rear of the concrete block garage just south of it.

Exhibit #73 is the basement at that address showing parts of the still and vats and still equipment found there. I made notes of my investigation out there, I don't have them with me. There was no garage at 7915 but just south of it was a three car cement block garage, which was connected to 7915 by a tunnel under ground. The tunnel was south of 7915, it would be about 7917 I imagine. You enter the garage and you go through a tunnel leading to 15. I entered that garage, there were boards covering a hole in the north part of the garage, and I raised those boards up, and there was a drop of about four feet, and you had to crawl through the tunnel to the house at 7915 Saginaw. At that place there was a 300 gallon still, set up with cooler, condenser and tri-box, and two vats containing 8,000 gallons of mash, and a lot of empty five gallon cans.

On the second floor of those premises there were two five gallon cans full of alcohol on which there were no internal revenue stamps. I went through the premises there, I don't recall that I found anything on the second floor in addition to what I have described.

Investigators Rossner and McElroy were with me. Rossner had the search warrant, I didn't see Kwiatowski at that time. I didn't participate in the arrest of Kwiatowski. I never saw Kwiatowski. I was merely there

with agent Rossner at the time of the service of the warrant. It is customary for one or more agents to accompany the man who is serving a search warrant.

629

Cross-Examination by Mr. Stewart.

I was not before the Commissioner when the Kwiatowski case was called. One of the agents was McElroy.

Q. He has been fired since that time for bribes, hasn't he?

Mr. Ward: I object, your Honor. That question is not proper, I object to it, and counsel knows he has had too long experience to ask a question of that nature.

The Court: Objection sustained.

Mr. Stewart: Q. Well, is there anything now that you know about Kwiatowski than you have told us?

A. That is all I know.

Q. Well, then you don't know anything that would be evidence against him concerning this still, do you?

A. I know the still was found there. That is all I know.

Q. That is all you know?

A. That is all.

Mr. Stewart: That is all.

Mr. Ward: And you were with Rossner, who was here in the City, and will be here,—all right, that is all.

(Discussion out of hearing of Jury.)

Mr. Stewart: I think I should be permitted to show the agent was fired for taking bribes. I offer to prove if he was permitted to answer, he would say he knew that.

Mr. Ward: No, no.

The Court: No.

Mr. Stewart: I want a ruling in order to protect my record. I offer to show if the witness were permitted to answer, he would say yes. I want to make my record.

The Court: You are asking if some other agent—
630 Mr. Ward: No, no. This is not proper cross-examination.

Mr. Stewart: The agent who worked with him on the case who is not here. I want to know if he was discharged from the Department for taking bribes. I will offer to prove that if he was allowed to answer, he would say yes, for taking bribes.

Mr. Ward: How do you know that?

Mr. Stewart: I know that for a fact.

The Court: Is that true? Do you know it?

Mr. Stewart: Yes, sir.

Mr. Ward: I don't know a thing about it.

The Court: Does that have anything to do pertaining to this particular case? It was the other fellow, not this one.

Mr. Ward: I don't know a thing about it. I have to see those questions.

The Court: Well, you made your offer of proof, you make your offer of proof. You made it?

Mr. Stewart: Yes.

The Court: That offer is denied. We will take a recess.

(Witness excused.)

CLARENCE P. ROSSNER, Re-called as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination by Mr. McGreal.

I am the same Clarence P. Rossner who was sworn and has testified in this case before. I had something to do with the investigation of the Walter Kwiatowski case, and serving of the search warrant.

After observing the premises at 7915 South Saginaw Avenue, investigator McElroy procured a search warrant, which I had in my possession on the night of August 25, 1938. We observed the premises and about 6:30 P. M.

a machine was seen going into the premises. I didn't know at that time who it was. I know now it was a man by the name of Walter Kwiatowski. He left the front premises and got into his car and drove away. McElroy followed him. About 8:45 P. M. the same car, with the same man, returned to the premises, and about five minutes later he came from the premises after which I had a search warrant. I walked up to this man and placed him under arrest and searched him, and found two half pints of untaxpaid alcohol in his pockets. We took him to the South Chicago Avenue police station and questioned him, and found some keys on him, and some papers. And the next morning at 6:30 I served a search warrant on the premises at 7915 South Saginaw Avenue. One of the keys found fit the premises of the rear door at that ad-

dress. We found a 300 gallon still in the basement, two vats containing 8,000 gallons of mash. On the second floor I found a five gallon can containing some alcohol. We found gas bills in the name of Walter Kwiatowski at 6010 South Saginaw Avenue. I found a bank book, I think I found that in a trunk on the second floor, and the deposit showed about \$4500.00, a savings book. I do not recall what bank, it could have been the South Chicago Trust and Savings Bank, I don't know what bank. I searched Kwiatowski, he had some keys, he had \$187.00 and some cents on his person, a vehicle tax for another Ford car, and a license receipt for another Ford car. I have not described the tunnel that I found there and where it led to. (Here witness describes tunnel, which description is the same as that given by investigator Gilbert, also identified and describes Exhibits #72, #73 and #71.)

The next day on the 26th, we brought Walter Kwiatowski to the office of the Alcohol Tax Unit, and tried to take a statement from him, and he said that he didn't speak very good English.

632 We then got an interpreter from the Immigration Bureau, and she couldn't get over the questions that we asked him. Whenever we asked him about his personal business he would answer; as soon as we start questioning him about the still at 7915 Saginaw Avenue, he would say, "Oh my head hurts." "I can't talk. My head hurts." He said he had noises in his head, there was a buzzing in his head. Whenever we made any reference to the still, he would say, "My head hurts," and he had a buzzing in his head, he didn't know. I asked him about the keys to the car, he said they were his keys, and that was his car, but he didn't know what the other key was for. I took him to the United States Commissioner, investigator McElroy and myself had him in the alcohol tax unit and started to take this statement from him. We spent about two and a half or three hours doing that. After that we had him finger-printed and photographed, we took the statement over at the customs building, our office was in that building. We finally got him to the Commissioner's office on the 26th of August. It was August 31, 1938, that was the date that was set for the hearing. A hearing was not held on that date. It was continued I don't know for how long, but the hearing was on September 14th. I was present with McElroy and Gilbert, I saw Kwiatowski, there was a lawyer representing him, he is in the courtroom. I will point him out.

Q. Indicating Mr. Balaban, counsel for Mr. Horton?

A. Yes, sir.

The Witness: Daniel Glasser the defendant in this case represented the Government at that hearing. I testified to the facts in the case, and after all the testimony was in and the attorneys for both sides argued, the Commissioner then asked me where I had arrested Mr. Kwiatowski, at which time I told him I arrested him in the alley.

He asked me why I arrested Kwiatowski, and I told him he came from the premises for which I had a search warrant, that there was an odor of mash coming. After that the Commissioner stated I had no right to arrest Kwiatowski.

Q. Didn't you at that time tell the Commissioner all of the facts about the case that you told here this morning?

A. I did.

Q. Did you produce the picture marked Exhibits 71, 72 and 73?

A. No, sir.

Q. Did Mr. Glasser talk to you about that case before the hearing before the Commissioner?

A. He did.

Q. Did you show him these pictures?

A. We did not have the pictures at that time.

Q. You did not have the pictures at that time?

A. No, sir.

Q. Did you tell him that pictures had been taken by representatives of the Government?

A. I don't believe we did.

Q. Did you tell the Commissioner what the size of this still was?

A. Yes, sir.

Q. And did you describe the passageway you talked about this morning?

A. Yes, sir.

Q. Did you describe the barn or garage at the rear of the premises?

A. I did. They were alongside the premises.

Q. Did you tell the Commissioner about the keys you found on the person of the defendant Kwiatowski?

A. I did.

634 Q. Did you tell him about the bank book you found?

A. Yes, sir.

Q. And did you tell the Commissioner at that time

and place, that the key that you found on the person of the defendant Kwiatkowski fit the lock on those premises?

A. I did.

Q. Did you tell the Commissioner at that time and place about the watch that you made of the premises at 7915 Saginaw Ave.?

A. I did.

Q. And did the agent Gilbert testify at that hearing?

A. I don't believe he did.

Q. Did Agent McElroy testify at that hearing?

A. I could not say.

Q. After all these facts were brought to the attention of the Commissioner, what did Mr. Glasser say, if anything?

A. I don't recall.

The Witness: I was called before a Grand Jury in connection with this case, I don't know when that was, I couldn't say how long after the hearing, it could have been in June of 1939, I could not say definitely. I don't recall who the assistant district attorney in charge of the Grand Jury was when that matter was presented. When I appeared before the Grand Jury in 1939. I have no recollection at all who it was, I know Martin Ward, assistant United States Attorney, I see him in the court room, I couldn't say that he was the attorney in charge of the Jury at that time. I presented those facts to the Grand Jury.

Cross-Examination by Mr. Stewart.

I have told this court and jury the truth, the whole truth and nothing but the truth, concerning my activities and knowledge of Mr. Kwiatkowski and that still. When I went before the Commissioner when Kwiatkowski had a hearing before the Commissioner, I told the truth, 635 the whole truth and nothing but the truth. I did not withhold any evidence. I didn't accept any bribe in the case. I did not enter into a conspiracy with Mr. Glasser or anybody else to assist this Kwiatkowski. I was performing my duty as agent of the Internal Revenue. I was doing that to the best of my ability. As far as I observed Mr. Glasser was performing his duty to the best of his ability as prosecutor. There was nothing fixed about that case to my knowledge. In my opinion the man was discharged because the Commissioner, after hearing

the evidence, decided on the facts and law that the man should be discharged, that is right. That was an honest opinion on his part as far as I was able to observe.

Redirect Examination by Mr. Ward.

I was never called before the Grand Jury on this particular case by Mr. Glasser. I am talking about the case that was heard before the Commissioner. In other words, it was not until June of 1939 that I appeared before the Grand Jury and testified in that case. I remember I got through testifying before the Commissioner. I went out to work or went back to the office, I don't know which. When I left the hearing was terminated, and the man was discharged. I made a note on my daily report.

Q. Did you expect to be called in that case again?

Mr. Callaghan: That is objected to, Your Honor.

The Court: Objection overruled. He may answer.

A. I did not.

Mr. Ward: Q. Now, was that case disposed of the day that the testimony was put in before Commissioner Walker?

A. To the best of my recollection, it was.

Q. Did you keep any notes on it?

A. Not of the Commissioner's hearing, no.

Q. You don't know whether it was continued from 636 the 12th to the 14th, do you?

A. I don't know if it was or not.

Q. You don't know whether a hearing was had and testimony was heard on the 12th, and then continued to the 14th for decision,—you don't know, do you?

A. No, sir.

Q. What did you do with that bank book when you found it?

A. I turned it in with the rest of the evidence.

Q. To whom?

A. In the case report.

Q. Who did you turn it in to?

A. It is put in the case report and given to the girls in the office, who incorporate it in the case report.

Q. Did you come over with Kwiatkowski to the District Attorney's office?

A. I did.

Q. Was that the same day the complaint was sworn out before the Commissioner?

A. It was.

Q. Who did you see when you got over to the District Attorney's office?

A. We immediately took Mr. Kwiatkowski into the Marshal's office, and then went into the Commissioner's office to get a complaint.

Q. Didn't you see Mr. Glasser before you got that complaint?

A. We got into the Commissioner's office and get a form, a complaint, on which we put the defendant's name and the amount of violation and address, and take it in to the District Attorney's office.

Q. Did you have a conversation with Mr. Glasser when you took that in?

A. I may have had.

637 Q. Well, what did you say to him and what did he say to you?

A. I couldn't say.

Q. What?

A. I don't know.

Q. You have no recollection of it at all?

A. No recollection.

Q. Was Mr. McElroy there?

A. He was.

Q. Did he talk to Mr. Glasser?

A. I don't recall if he did or not.

Q. Was Kwiatkowski there with you?

A. No.

Q. He was in the Marshal's office?

A. Yes, sir.

Q. After you went into Glasser's office, you then went back to the Commissioner's office?

A. Yes, sir.

Q. And then Kwiatkowski was brought in by the Marshal, is that right?

A. Yes, sir.

Q. Did you have the bank book with you at the time you were in Mr. Glasser's office?

A. No, sir.

Q. Did you have a report made out of the facts in the case?

A. No, sir.

Q. Are you sure about that?

A. Quite sure.

Q. Did you ever have occasion to bring a report per-

sonally to the District Attorney's office when you came over with—

A. We have now, yes, sir.

638 Q. Take a look at this and see if it refreshes your recollection: "Document dated August 26, 1938, Case Number 2430, United States District Attorney, United States Court House, Chicago, Illinois. Attention D. D. Glasser, Assistant United States Attorney." Do you remember that?

The Court: You were asked a question. Will you answer?

A. I don't recall, but investigator McElroy had this letter.

Q. How do you know that?

A. Because he gave it to the stenographer, dictated it, took it to Mr. Ritter and had it signed.

Q. Would you say that Mr. McElroy had that the same time you were before Mr. Glasser, before you got that complaint approved?

A. Yes, sir.

Q. Do you recall now seeing that letter in Mr. Glasser's possession?

A. I do.

Q. That was on the same day as the date of the letter, was it not?

A. Yes, sir.

Q. August 26th?

A. Yes, sir.

Mr. Ward: Mark this No. 74.

(Document marked as requested.)

Q. When was the first time that you saw Mr. Balaban in this case?

A. I think it was the day of the hearing, I am not sure.

Q. What?

A. I believe the day of the hearing.

Q. Was Mr. Horton, the defendant, there?

A. I guess he was around there.

639 Q. What is that?

A. I think he was around there.

Q. What makes you say that?

A. Well, he usually was around the Commissioner's office.

Q. Well, in this particular case, do you recall Mr. Horton being there?

A. I do not.

Q. Now, did you know that Kwiatkowski was released on bail?

A. No, sir, I did not.

Q. Well, you did not hear the case the same day the complaint was authorized, you did not give your testimony that day?

A. No, sir.

Q. You keep a record of continuances in books, so that you will know when to come to court, don't you?

A. I do on my Dailies, and we are notified in a book we have in our office, on which days to come to court, yes, sir.

Q. When you left the Commissioner's this day, did you know you had to return?

A. The date was set for the 31st.

Q. It was set for the 31st of August?

A. Yes, sir.

Q. Now, on the first day the complaint was approved, you were present when Kwiatkowski was taken in before the Commissioner?

A. Yes, sir.

Q. Was Mr. Glasser there?

A. I don't recall if he was or not.

Q. Was anyone representing the Government that first day?

A. I don't recall whether there was or not.

Q. You went right in from Mr. Glasser's office, didn't you?

640 A. Not immediately.

Q. How long after?

A. Oh, about fifteen or twenty minutes, until the complaint was signed and made out.

Q. What were you doing in the meantime?

A. I was waiting for the complaint to be filed, written up and signed, taken into the Commissioner, and have it signed, take it and have a warrant made out and wait for the Marshal to bring the defendant in.

Q. Was anything said about Kwiatkowski having \$4500.00 in the bank?

A. No.

Q. Before Glasser?

A. No, sir.

Q. In your presence?

A. No.

Q. Was that mentioned at all?

A. It was brought out at the hearing that I found a book with deposits of \$4500.

Q. It was in this letter, was it not?

A. Yes, sir.

Q. The first hearing was continued to August 31st?

A. The arraignment was on the 26th and the Commissioner set it for hearing on August 31st.

Q. It was on August 31st that Kwiatkowski appeared with a lawyer, was it?

A. I couldn't say that definitely, no, I don't know.

Q. Well, was it in September?

A. The best recollection I have of Mr. Balaban being there is on the day of the hearing, the 14th of September.

641 Q. How many times did you say you observed Kwiatkowski enter and leave the premises where the still was found?

A. About six thirty the first time in the evening. He stayed about ten minutes and he came back about 8:40.

Q. Now, you got a search warrant to search that place?

A. We had a search warrant in our possession at that time.

Q. And you had stated before the Commissioner that you had probable grounds, reasons to believe there was contained in the premises there a still?

A. I did not make the affidavit.

Q. Mr. McElroy made it?

A. Yes.

Q. You know that is the procedure?

A. Yes, sir.

Q. You went before the Commissioner and swore there was a still there, isn't that true, or Mr. McElroy did, in your presence?

A. I don't believe I was present when he swore to the affidavit. I was in the Commissioner's office.

Q. At any rate, you had observed the place before you got the warrant?

A. Yes, sir.

Q. You saw Kwiatkowski come and go on several different occasions, didn't you?

A. He came and went on one occasion. When he came back the second time, we concealed ourselves at the south end of the garage, and when he came out, we arrested him.

Q. Take a look at this. Is that your signature?

A. It is.

Q. And what is that, if you know?

A. A complaint.

Q. Complaint for what?

A. Possession of a still, mash, alcohol.

642 Q. So you made the complaint, didn't you?

A. I signed the complaint against him after he had been arrested.

Q. Yes. Now, then, it is your recollection, however, that Mr. McElroy is the man who made the affidavit for a search warrant?

The Court: What do you say?

A. Yes, sir.

Mr. Ward: Q. Yes. And he did not give any testimony before the United States Commissioner, nor was he asked to in your presence?

A. I don't recall if he testified or not.

Q. Did you seize that automobile?

A. We did.

Q. Who seized that automobile?

A. Investigator McElroy and I.

Q. Where was the automobile when you made the seizure?

A. In the alley behind the garage.

Q. Was anyone in it?

A. Kwiatkowski was in it at the time.

Q. What happened to that automobile?

A. It was placed in the Union Station Motors garage.

Q. It was forfeited to the Government of the United States, wasn't it?

A. I don't know.

Q. If it was, you don't know anything about that?

A. No, sir.

Q. Now, there was \$187.17 found in Kwiatkowski's possession. What, if anything, did you do with reference to that?

A. That was returned to him.

Q. To him?

A. I believe.

Q. What?

643 A. I believe it was returned to him, I am not sure.

Q. Well, who got that money from Kwiatkowski?

A. When we searched him, Mr. McElroy found it in his purse at the police station.

Q. At the police station?

A. Yes, sir.

Q. Now, when you talked to Kwiatkowski, did he tell you he lived at any other address than 7915 Saginaw?

A. He gave his address as 8010 South Saginaw.

Q. Did you make a check on that?

A. We did.

Q. What did you find?

A. That he rooms there.

Q. What did you find about the place where the still was, in reference to him living there?

A. I made no investigation about that. That was done later by a special investigator.

Mr. Ward: I see. That is all.

Recross Examination by Mr. Stewart.

When I was working on this case and observing Mr. Kwiatkowski, McElroy was with me, we were working as partners, at that particular time. Mr. McElroy knows something about the case as to the movements of Kwiatkowski that I don't know. McElroy followed him away from the still site when he first came, and then left. Where he went I don't know. As far as the evidence concerning Kwiatkowski around the still, finding the keys, money, and such things as that, we both have the same knowledge. It is very often the practice where one of the agents acting as partners especially before a Commissioner, if one agent gives his evidence, the other 644 doesn't need to. That happens often. Where that evidence is the same. There is nothing unusual about that procedure. The letter dated August 26th which Mr. Ward showed me has nothing in it that I have not told here. It is a correct summary of my evidence as far as Kwiatkowski is concerned. I gave the Commissioner the substance of that in my testimony. There wasn't anything that was withheld from anybody, and the things I am talking about, first getting a search warrant and then coming back and putting my prisoner in with the Marshal while I signed the complaint is all the usual routine proceedings. Some time before this I had experience as an agent, in these still cases.

It used to be that I could come over before I took time to put my report in actual writing—I used to bring the prisoner over before I wrote up the report. Because I did not want to wait to write up the report, I wanted

to bring the thing over and get it started. In those days I used to tell the assistant District Attorney in charge, orally, a brief summary of what kind of case I had, and ask whether I should go ahead with the complaint. I don't know if Mr. Glasser requested this practice of having me get a letter when he was there. After Mr. Glasser got there we had orders to get a letter to bring to the District Attorney's office. I do not know when that order was first issued. Somebody else in our office might know more about that. As far as I am concerned when we have a full and fair impartial hearing before a Commissioner and the Commissioner decided to discharge the defendant, that is very often the end of that particular case. And the case is closed as far as I am concerned.

Mr. Kwiatkowski is 55 years old.

Redirect Examination by Mr. Ward.

There are no age limits on indictments to my knowledge. When I came over here to the District Attorney's office and gave him the letter and the facts and went in before the United States Commissioner from that time on, the prosecution is in the hands of the United States Attorney, and I await his orders, then.

(Witness excused.)

Mr. Ward: May I read that letter at this time, Your Honor?

The Court: You mean his report?

Mr. Ward: This letter.

The Court: You may.

Mr. Ward: I read the first part, so I will start with the letter proper. (Reading EXHIBIT NO. 74.)

"Dear Sir:

"On August 23, 1938, Investigator H. R. McElroy and C. P. Rossner made an investigation at the rear of 7915 Saginaw Avenue, Chicago, Illinois, at which time they smelled the odor of fermenting mash emanating from the garage to the south of the building located at that address.

"On August 24, 1938, between the hours of 9:00 P. M. and midnight Investigators McElroy and Rossner again investigated the premises of 7915 Saginaw Avenue, Chicago, Illinois, at which time they detected the odor of fermenting mash emanating from the premises.

"On August 25, 1938, Investigators McElroy and Rossner were observing the premises at 7915 Saginaw Avenue, Chicago, Illinois, and at 6:40 P. M. observed a Pontiac sedan bearing license No. 556-515 drive up to the rear of the premises, at which time a man got out of the Pontiac and went into the gangway and in about one minute a light was seen burning on the second floor of the premises at 7915 Saginaw Avenue, Chicago, Illinois. At 7:30 P. M. the light was seen to go out and the same man who entered the premises at 6:40 came out of the gangway, got into the Pontiac sedan and drove west in the alley alongside the premises to Saginaw Avenue, and then turned south on Saginaw Avenue, continuing in a southerly direction.

646 "At 8:40 P. M. the Pontiac sedan was again seen driven to the rear of the premises, at this time approaching the premises from the north. The Pontiac sedan stopped at the rear of the garage at 7915 Saginaw Avenue, Chicago, Illinois. The man got out, went to the second floor of the premises where he remained until 9:45 P. M., at which time the man was seen to leave the gangway and get into the Pontiac sedan, at which time Investigators McElroy and Rossner went to this man, who was sitting in the Pontiac sedan, placed him under arrest and searched him and found on his person two one-half pint bottles of untaxpaid alcohol. This man identified himself as Walter Kwiatkowski. Walter Kwiatkowski was then taken to the East Side Police Station and Investigators McElroy and Rossner returned to the vicinity of the premises at 7915 Saginaw Avenue, Chicago, Illinois.

"At 6:30 A. M. Investigator Rossner, assisted by Investigators Gilbert and McElroy served a Search Warrant on the premises at 7915 South Saginaw Avenue, at which time a 300 gallon St. Louis still was seized, 8500 gallons of cane sugar mash and on the second floor of the premises were found 2 5-gallon cans of untaxpaid alcohol. On the second floor of the premises, a seven room house, numerous gas and electric light bills in the name of Walter Kwiatkowski were found, also a bank book in the name of Walter Kwiatkowski, which showed he had on deposit on the South Chicago Trust and Savings Bank the sum of \$4500.71, at the time he was searched by Investigators McElroy and Rossner a receipt for vehicle tax in the name of Walter P. Lis was found. On the premises at the time of the search was also found a re-

ceipt for a release for the sum of \$85.00 which was paid for all claims for damage due to an automobile accident.

"At the time of the arrest of Walter Kwiatkowski there were found on the key ring to which the automobile keys were attached, two keys which fitted the garage doors at the rear of the premises at 7915 South Saginaw avenue, and also a Yale key which unlocked the second floor 647 front door of the premises at 7915 South Saginaw avenue. At the time of his arrest Walter Kwiatkowski had on his person the sum of \$187.17. When asked by the Investigators where he was employed he stated that he was not working and had not been working for over a period of sixteen months. When questioned about being on the premises at 7915 S. Saginaw avenue, Walter Kwiatkowski stated he just went to visit a friend and was only on the premises for a ten minute period. Walter Kwiatkowski also stated at that time that he resided at 8010 Saginaw avenue.

"This preliminary report is being furnished your office for your consideration and such action as you deem advisable.

"Very truly yours,

"Robert B. Ritter,
"Investigator in Charge."

STANLEY JASINSKI, an interpreter on behalf of the Government, was duly sworn to translate English into polish and polish into English, from the testimony of the witness Walter Kwiatkowski.

WALTER KWIATKOWSKI, called as a witness on behalf of the Government, being first duly sworn by interpreter, was examined and testified through the interpreter and by himself as follows:

Direct Examination by Mr. Ward.

My name is Walter Kwiatkowski, I live at 8010 Saginaw Avenue.

Mr. Balaban: Your Honor, I wish to say this,—it has not yet appeared that this witness does not speak the English language. Until such time as it does appear, an interpreter is not necessary.

The Court: I will ask him some questions, first, and find out whether or not he does speak English.

Examination by the Court.

648 My name is Walter Kwiatkowski, I live at 8010 Saginaw avenue, in Chicago, I am 53 years old. It is pretty hard for me to talk, I can listen but not hear. I am not married, I live in Chicago about 20, 30 years. I went to school in Chicago, I was here in school 14, 15 years ago. 1914, 1915 I was in South Chicago evening school. I did not have much time to study the English language there. I am working at Republic Steel.

The Court: I think we will be able to go along as far as we can, without an interpreter.

The Witness: Here is my check. (Witness produces identification tag.)

The Court: I understand.

A. I work for inspector.

Q. Now, the lawyers are going to ask you some questions. If you don't hear, ask him to repeat the question. We will take our time and go along slowly, and you answer as best you can. We are going to talk in English for a while.

A. Ten hundred seventy five dollars.

The Court: Wait until he asks you a question. Proceed Mr. Ward.

Direct Examination by Mr. Ward (Resumed).

The Witness: On the south side I live 20, 25 years, because Republic Steel working about 18 years.

Q. You had a still at 7918 Saginaw Avenue on August 26, 1938?

A. '38? It was '37, I live on second floor, the peoples was out, I rent from somebody, Mrs. Creiger, I rent from. I go to Michigan, Calumet—

The Witness: I guess I could tell you the picture you show me is a picture of the house I lived in on August 26th, 1938, maybe the same. Maybe it is also a picture of the garage. I had a Pontiac automobile. I did not
649 drive my Pontiac automobile inside that garage, nothing in garage, automobile just outside. Just came about two weeks from Calumet, Michigan, and Government catch me. I was arrested on August 26th, 1938. When I was arrested I was taken by the officer downtown here to post-office, take me to South Chicago police, then downtown here. I was locked up. After I was locked

up in this building here, I was brought in a room where there was a man sitting, with white hair, he was the Judge, yes, I remember. After I saw him he was Judge. I don't remember whether—you take me out, Mr. Horton.

Q. Who is Mr. Horton? Is he in the court room?

A. Tony Horton, he took me out, put my bonds.

Q. Is that him?

A. Yes, he is a good man, he take me out.

Q. When you came to the building, was it the same day that you got out?

A. Same day.

Q. Did you pay Mr. Horton any money before you got out?

A. I could not tell you, I don't remember. After the still, couple of days.

Q. Did you go out to the bank with Mr. Horton?

A. No, Mr. Horton not my lawyer. I was in the bank and they never gave it me. I take Mr. Balaban, he go with me to the bank.

Q. What did Mr. Balaban do when you got to the bank?

A. The bank would never give me. I take the lawyer, he was a big officer. I got to show and give thirty-seven fifty.

Q. You got \$3750 when you went out with the lawyer?

A. Yes, sir.

Q. Did the bank give you the money?

A. No give to me.

Q. How much did you have in the bank at that time?

A. At that time I got forty-four hundred, forty-five hundred like this. I take thirty-seven fifty. He give 650 my sister over there—

The Court: Just a minute.

Mr. Ward: Just answer the question.

The Court: Do you mean \$37.50?

Mr. Ward: It was thirty-seven hundred and fifty dollars you got there that day from the bank, wasn't it?

A. Yes,—forty-five hundred I got. I am not sure, my remembering is not so good.

Q. You had how much in the bank?

A. About forty-four hundred.

Q. And how much did you have left when you took that money out?

A. Left there, I think four hundred fifty.

Q. All right. Who was there when you had this three

thousand and some odd dollars? Who was with you that day when you got that out?

A. My lawyer.

Q. What is his name?

A. Mr. Balaban.

Q. Was Mr. Horton there?

A. Mr. Horton never was in bank.

Q. When did you see Mr. Horton?

A. Just when he take me out, when arrested.

Q. How much money did you give Mr. Balaban?

A. Mr. Balaban, well, I gave two hundred seventy-five just when he take the money right in the bank. He was to charge eight hundred and take from the bank.

Q. Who was?

A. (Answer unintelligible.)

Q. Who did you give eight hundred dollars to?

A. Thirty-seven fifty was eight hundred short to fix the case.

651 Q. Eight hundred dollars to fix the case? Who said that?

A. I think he said that, "I charge you six hundred dollars to fix the case"—

The Court: Wait a minute.

Q. When you took that money out, you took out about \$3750?

A. Yes, thirty-seven fifty.

Q. And you paid your lawyer, Mr. Balaban that day. How much did you pay Mr. Balaban that day?

A. For the work, Mr. Balaban himself take.

Q. How much did he take?

A. My sister was there. When he came back he was eight hundred short.

Q. How much did Mr. Balaban take that day?

A. I just figure his work, Mr. Balaban, for that case, and Mr. Tony Horton, eight hundred. They charge me money right in the bank for to figure lawyer eight hundred dollars.

The Court: We will use the interpreter on this bank transaction.

Mr. Ward: Q. How much did you draw out of the bank with the lawyer?

A. Thirty-seven fifty.

Q. Thirty-seven hundred and fifty dollars?

A. Yes.

Q. I now ask you what you did with the thirty-seven hundred and fifty dollars.

A. I give my sister thirteen fifty.

Q. What did you do with the balance?

A. I wanted to get a car. The lawyer said to me—

Mr. Stewart: Just a minute, your Honor, I object to any conversation out there at the bank. They don't show any defendant present. It would be just another thing we should not have to meet.

652 The Court: That is true, but we are all interested in knowing what happened.

Mr. Stewart: Conversation would not be admissible here.

The Court: I don't want the conversation. I want to know what happened to that money, what he used it for.

The Witness: I had some trouble.

Mr. Ward: I think we ought to split that up. What did he say, Mr. Interpreter?

The Interpreter: He said that thirteen hundred and fifty dollars of this money was used for the purpose,—he turned this over to his sister for the purpose of clearing up some mortgage he had on the car, as far as I can understand it.

Mr. Stewart: Just a minute, your Honor.

(Colloquy between Court and counsel inaudible to reporter.)

The Court: The lawyers believe you can understand English and talk English, if you want to. I think we will try to get along without the Interpreter, after he gets through reading that statement.

The Interpreter: He wants the Interpreter.

Mr. Stewart: I have read the statement that Mr. Ward has, that summarizes what he expects to prove by this witness. If Mr. Ward will read it, we can agree that is what we can wrangle out of him, if he stays here all afternoon.

The Court: Very well. You may read the statement.

Mr. Ward: (Reading:)

“June 16, 1939

1900 Bankers Building
Chicago, Illinois.

“I, Walter Kwaitkowski, 3026 Maneastee Avenue, Chicago, Illinois, hereby make the following statement to Special Agent Walter J. Devereux, Federal Bureau

653 of Investigation, United States Department of Justice, and to Special Investigator Thomas Bailey, Alcohol Tax Unit, Chicago, Illinois, there being no threats or promises made to me.,

"I was arrested on August 25, 1938 while driving an automobile away from the premises at 7915 Saginaw avenue, Chicago, Illinois, at which place investigators of the Alcohol Tax Unit had seized an illicit distillery. The following day I was taken before the United States Commissioner, Post Office Building, and was placed under \$2000.00 bond. Tony Horton, a colored bondsman, arranged for my bond for which I paid him \$200.00. Horton asked me if I had an attorney and I told him I had not. After Horton had arranged for my bond he then took me to the office of Henry L. Balaban, an attorney. I stated my case to Balaban and he asked me for fifty dollars. I then told Balaban that the Government Agents had taken a bank book from me that showed deposits of above four thousand five hundred dollars. Balaban told me that we would have to get that money out of the bank, and arranged to have me meet him with my sister, Anna Dzubinski, 1547 Girard street, Chicago, Illinois, at the South Chicago Bank on 92nd Street where the money was deposited, at 9:30 the following morning. The following morning I met Balaban at the appointed place. He instructed me to draw the money out of the bank. I then drew three thousand seven hundred fifty dollars from the bank and Balaban asked me for two hundred dollars for his services. I paid Balaban at that time the two hundred dollars. My sister was present at the time the money was paid to Balaban and helped arrange for the withdrawal of the money from the bank. A few days later I returned to the bank and drew the balance of the money out.

654 "A few days after I withdrew the three thousand seven hundred and fifty dollars from the bank I came to town, and went to the Post Office Building to see Tony Horton. I saw him in the Commissioner's office on the eighth floor. Horton told me he wanted to talk to me and instructed me to meet him in the lobby of the Post Office. I went to the lobby and in a few minutes Horton met me and he told me that he could 'fix' the case for six hundred dollars. I then gave Horton six hundred dollars in currency and Tony said to me: 'Don't be afraid, I'll fix it.'

"On September 14, 1938 I appeared before the United

States Commissioner for trial in my case. I was represented by Attorney Balaban. The Government was represented by a large man with red hair. I don't know his name. At the end of the trial my attorney told me that I was dismissed; that I could go home.

"A short time after this trial the Government placed a lien on some money that I had in the same bank. I had replaced in the bank five hundred dollars of the money I had withdrawn at the time Attorney Balaban was with me. On learning of this lien I went to the office of Mr. Balaban and told him what had happened. Balaban told me that that would be another case and that I would have to give him twenty-five dollars to represent me in this matter. I then told Mr. Balaban that I would like to get my automobile back that the Government had seized from me at the time of my arrest. He advised me not to make an attempt to secure my automobile as the Government more than likely would reopen the case against me and it would cause me more trouble. I went to see Mr. Balaban five or six times about this lien that the Government had at the bank but there has been no settlement at this date.

655 "I have had this statement of two pages read to me by Special Investigator Bailey of the Alcohol Tax Unit and the same is true.

(Signed) Walter Kwiatkowski,
Witness: Thomas Bailey (Signed),
Thomas Bailey,
Special Investigator Alcohol Tax Unit.

Subscribed and sworn to before me this 16th day of June, 1939.

Walter J. Devereux (Signed),
Walter J. Devereux,
*Special Agent, Federal Bureau of Investigation, U. S. Dept. of Justice,
1900 Bankers Building, Chicago, Ill."*

Mr. Stewart: It is agreed that if you had questioned him, that would be his testimony. Now I want to cross examine him on it.

Cross-Examination by Mr. Stewart.

Q. You paid Mr. Balaban two hundred dollars as your attorney, didn't you?

A. I spend ten hundred seventy-five, I figure.

Q. Wait a minute, just answer me. You paid two hundred dollars to Mr. Balaban as your attorney, didn't you? Two hundred dollars you gave him?

A. Two seventy-five I spend with him. Two hundred I never give. He take it right in the bank. He was to charge eight hundred.

Q. Mr. Balaban got two hundred dollars of your money so that he could be your lawyer, is that right? Just answer me.

A. For the two hundred he take that, six hundred for fix the case. Eight hundred he charge me. You know 656 about the fix,—a good lawyer, you can fix. Tony worked for me.

Q. In this statement that you gave the Government on June 16, 1939, you say you gave Tony Horton \$600. to fix your case. Did you do that? Did you give Tony Horton six hundred dollars to fix your case?

A. No, I no give him.

Q. You did not give him six hundred dollars to fix your case? Wait a second. When you are through answering, stop talking, please. I will ask you and you will answer. Mr. Horton charged you for making your bond, didn't he?

A. Yes.

Q. And that is all the money you paid him for just then, making your bond, that is right, isn't it?

A. Well—

Q. Just answer whether that is right or wrong.

A. I just spend—

Q. The only money you gave to Mr. Horton was for your bond, isn't that right.

A. I spend ten hundred seventy-five, that is what I figure. Where it go? For my case.

Q. You did not give Mr. Horton a thousand dollars, did you? You did not give that amount to Horton? You went out with Horton to the police station where the police had taken your \$187 away from you? Ask him that in Polish. You went out to Roseland, didn't you, with Horton, and after you got out from down there, to the police station?

The Interpreter: He doesn't remember where. He said he was at a doctor's prescription. }

Mr. Stewart: Q. Ask him when he was first arrested,

if the police did not take \$187 out of his pocket and give him a receipt for it in the police station?

657 A. Yes.

Q. All right. Were you operating that still on Saginaw avenue? Were you running that still?

A. No, not me.

Q. Did you have anything to do with that?

A. Nothing.

Q. You were an innocent man?

A. Nothing, I am a wrong man.

Q. You were innocent, you are not guilty?

A. Nothing for that business.

Q. You had nothing to do with the still?

A. Nothing.

Q. You had nothing to do with the alcohol business?

A. Nothing.

Mr. Stewart: That is all.

(Whereupon a recess was had.)

Mr. Balaban: Your Honor, the defense wishes to recall Walter Kwiatkowski for further cross-examination.

The Court: All right.

I want you to understand that I know you can understand English and can talk English. Listen to what the lawyer says, listen to his question, and then answer without a long speech. Do you understand that?

The Witness: A. Yes.

Mr. Balaban: I would like to know where the Interpreter is, your Honor. He was here.

The Court: Will you try without the Interpreter?

Mr. Balaban: Yes, but I want him here, your Honor.

The Court: He is right there.

Mr. Balaban: I would like to first ask the Interpreter a question for the purpose of the record.

658 Q. Mr. Interpreter, is it not a fact that in the Polish remarks between you and Walter Kwiatkowski, he said to you he did not say he paid Tony Horton \$600.00.

The Interpreter: A. No, sir.

Cross-Examination by Mr. Balaban.

I know you, you my lawyer. I do not read English. I do not know what the words "Distillery", "Illicit", "Arranged", "Inspector", "Appointed", "Withdrawal", mean. I know balance means, a balance from people

owe money, where you got balance. I do not know what "lobby", "Currency", "represented", "lien", "seize", "cause", "special investigator", and "subscribed and sworn to" mean.

Q. Do you know what the words "Alcohol Tax Unit" mean?

A. I know what tax is, you know. I understand supposed to be, get your pay.

I don't know where I was when I put my signature on this document. I signed it, could not tell you where, don't know where. Don't know how long ago. Don't remember when I write my name. Don't remember when I sign, what day or what month. That is my name there. Could not tell what day that came up. I don't know who was present when I signed this or what man or how many men besides myself, never tell you how many men. I don't remember what day I signed or what month.

Q. Before you signed it, who did you see? Any man around this table here, at the Government table?

A. I don't remember.

The Court: Were you there, Mr. Bailey?

Mr. Bailey: Yes.

Mr. Balaban: Q. Did you see this man when you signed?

The Court: Q. Did you have a talk with that man?

A. Yes.

Q. Your answer is yes?

A. That is him, yes.

Q. You did have a talk with him?

659 A. Yes, we talk.

Q. Where did you talk to him the first time?

A. Well, the first time about couple weeks ago, month ago.

Q. Where did you talk to him?

A. He was Government.

Q. I asked you, where did you talk to him? You are not so dumb as you are pretending to be. Answer my question. Where did you talk to him?

A. He was somebody bring me up.

Q. Where did you talk to him, at his home, your home or where?

A. Right here.

Q. In the Post Office building?

A. In the Government building.

Q. Why didn't you answer that question in the first

place? Then you did talk to him. How long did you talk to him in this building?

A. Not long talk. We don't speak maybe fifteen, twenty minutes.

Q. Did you tell him about going to the bank to get money and who you paid the money to?

A. I tell him, he ask me.

Q. He asked you questions and you told him?

A. Right.

Q. Do you remember what questions he asked you?

A. Yes, he asked me how is that case, how I lose money, why I use a car. Yes, I talk.

Q. Do you know whether he was writing on a piece of paper what you were saying?

A. Yes, he show me paper to sign.

Q. Did he write on the paper?

A. Yes, he write on the paper and I sign it. I can't tell you how long.

660 Q. Did you tell him about paying any money to your lawyer?

A. Well, the question, I tell him I was in trouble. My lawyer take me to bank because bank does not give me the money. I tell him that.

Q. Did you tell him anything about Tony Horton?

A. Tony Horton? Yes I tell him he was to care for Mr. Balaban's case so the case—

Q. Let's forget about Mr. Balaban. What did you tell Mr. Bailey about Mr. Horton? At any time what did you tell him?

A. I can't say what question he give me.

Q. What question did he ask you about Mr. Horton?

A. Mr. Horton?

The Court: Stand up, Mr. Horton. You know who I mean.

(Defendant Horton arose.)

A. Tony, yes.

The Court: Q. What question did he ask you about Tony?

A. I never talk to him. It was before, we used to come right to this building.

Q. What did the Government man ask you about Tony?

A. I don't know.

Q. What did you tell the Government man about Tony?

A. If I tell him, he was to care for my case, Mr. Lawyer and Mr. Horton.

Q. What did you tell the Government man about any money you paid Tony?

A. He was to have money.

Q. Did you tell him how much money you paid to Tony?

A. Ten seventy-five I spend.

Q. Did you tell him how much of that \$1075 you gave to Tony?

A. Give Tony?

Q. Yes, gave Tony.

A. No, no give Tony.

661 Q. Did you pay Tony any money?

A. Pay for Tony, I figure.

Q. How much money did you pay Tony?

A. Tony?

Q. Listen, how much money did you pay Tony? Did you pay him one dollar, five dollars or a hundred dollars?

A. Eight hundred he use right at the bank.

Q. How much money did you pay Tony? Answer that question.

A. I got to pay eight hundred, six hundred for the case and two hundred for bonds.

Q. You could have answered that a long time ago. You paid two hundred dollars for the bonds?

A. Yes.

Q. And \$600—

A. For the case. He spend the whole thing, he care for me. Mr. Horton, Mr. Balaban, I spend ten Hundred and seventy-five.

Q. You paid \$200. for the bond?

A. Yes.

Q. And you paid your lawyer, Mr. Balaban, \$275. Now, how much money did you pay to Tony?

A. Well, I figure the whole thing, I got to spend—

Q. Will you listen to me? How much money passed from your hands to Tony's hands?

A. Just eight hundred, two hundred for the bond.

The Court: Go ahead.

Mr. Balaban: Q. Did you give Tony more than \$200?

A. Two hundred he was to take for the bonds.

Q. Now, did you give him any more money, Tony? How much did you give him?

A. Just two hundred he take.

Q. All right.

A. Six hundred—

662 Q. Which one—

The Court: Just a minute, he had not finished.

Mr. Balaban: Q. Did you give Tony Horton more than \$200. for the bond?

A. It was eight hundred. Two hundred used for the bond, eight hundred for the whole thing.

Q. Did you give that to Tony?

A. You was at the bank, you charge eight hundred.

Q. Did you give that money to Tony? Did you give more than two hundred to Tony?

A. You figure ten hundred seventy-five I spend, Mr. Lawyer.

Q. Who did you give that money to?

A. Tony, he work for me.

Q. Did you give the money to me?

A. You was in the bank, you take money right in the window, the bank give you the money.

Q. Who took your money at the bank?

A. You take it.

Q. Was not Frank Hodorowicz in that bank and did he take—

A. No, he did not take it.

Q. Was not Frank Hodorowicz in the bank with you and me and the teller at the bank?

A. I was with myself.

Q. Is it not a fact that Frank Hodorowicz was in the bank with you and me?

A. Never. When I have a lawyer, he take care of me.

Q. I want you to tell the Jury whether Frank Hodorowicz was in that bank with you and with me—

A. No business with Frank Hodorowicz. Just have a lawyer and he care for me.

Q. Was Frank Hodorowicz there with me?

663 A. Oh, couple dozen people there.

Q. Answer my question. Was Frank Hodorowicz in that bank with you and me?

A. I don't want to bother with him. You care for me.

The Court: Listen, I am asking you this question. That day at the bank, when you were at the bank with your lawyer, was Frank Hodorowicz there at the bank with you?

A. I never see him, I no bother with him.

Q. Did you see Frank Hodorowicz at the bank that day?

A. I was by myself and my lawyer.

Q. Did you see him at the bank that day?

A. I cannot say, I did not look.

Q. You did not see him?

A. No, look for lawyer.

Mr. Balaban: Q. Did you and I wait at the bank for Frank Hodorowicz to come?

A. No look for him.

Q. He came there then, didn't he?

A. If you see him, all right. Me no care for him. My care was for you, you take care of me.

Q. Was not Frank Hodorowicz and you and I and your sister, and your sister's daughter in the bank altogether when you got \$3750?

A. Thirty-seven fifty?

Q. Was not Frank Hodorowicz there then?

A. No take.

Q. Did he not take the money from the teller?

A. You give it to me, remember?

Q. I gave it to you?

A. Yes.

Q. What did Frank Hodorowicz do there?

Mr. Ward: He did not say he was there.

664 Mr. Balaban: Just a moment, Mr. Ward. Please leave me alone.

Q. What did Frank Hodorowicz do out at that bank with you and with me?

A. I don't know, none of my business.

The Court: He asked you what Frank Hodorowicz did out at the bank?

A. None of my business.

The Court: Ask him if Frank Hodorowicz was there at the bank, and tell him to answer yes or no. What did he say?

The Interpreter: He doesn't remember. He never did anything for him, no reason why he should remember it.

The Court: Now ask him this question, and I want him to answer yes or no. Make that plain to him. Did he pay Tony two hundred dollars for the bond? Wait, ask him this question, if he paid Tony eight hundred dollars.

The Interpreter: He paid Horton eight hundred, two hundred for the bond and six hundred for the case.

The Court: All right.

Mr. Balaban: Q. Where did you give Tony Horton the six hundred dollars?

The Court: Ask it through the Interpreter. He has made a serious charge here and you have a right to cross examine on it.

Mr. Balaban: Give us his response.

The Interpreter: The money was taken out of the bank.

Mr. Balaban: Q. I asked where did he give Tony Horton \$600. and I insist upon him returning an answer to that question.

Mr. Ward: I understood he said eight hundred dollars.

Mr. Balaban: What has he said, Mr. Interpreter?

The Interpreter: A. He keeps talking about the bank and the money.

The Court: Ask him, did he pay any money to Tony while Tony was in this Post Office building with him?
665 The Interpreter: Not in this building.

Mr. Balaban: Q. Where was it?

The Court: Did he pay any money to Tony in any office?

Mr. Balaban: What has he said?

The Interpreter: He does not remember. He did not pay any money in any office.

Mr. Balaban: Q. Where was it, if he paid it to him? What has he said?

The Interpreter: He is—I did not get it in words.

Mr. Balaban: I will repeat the question.

The Interpreter: He said he was eight hundred short and gave two hundred for the bonds, six hundred for the case.

Mr. Balaban: Q. Did he give that money to Tony Horton? Yes or no.

The Interpreter: He was short eight hundred. Two hundred went for the bond, and six hundred for the case.

Mr. Balaban: Q. Who did he give that six hundred dollars to, if anybody? What did he say?

The Interpreter: He said he was short six hundred.

Mr. Balaban: I will ask you again for the last time, did he give eight hundred dollars or two hundred dollars to Tony Horton? Which of those amounts?

The Interpreter: It is only eight hundred, two hundred for the bond and six hundred for the case.

Mr. Balaban: Q. Now, is it not a fact—does he know Frank Hodorowicz? Do you know Frank Hodorowicz?

The Witness: A. Sure I know him.

Q. How long have you known him?

A. Not so long. He was on picnic I was, he was buy me drink,—not so long.

666 The Court: This is a very serious lawsuit, and it is no place for merriment. I think he could be much more helpful if he wanted to.

Mr. Balaban: Q. Is it not a fact that Frank Hodorowicz built that still that you were charged with operating?

The Interpreter: He says he does not understand.

Mr. Balaban: Q. Who built the still at the Saginaw avenue address?

The Witness: A. What do you mean?

The Interpreter: He still does not understand.

Mr. Balaban: Q. Did you have the still on Saginaw avenue?

A. Me no have it.

Q. One more question. This paper, you signed this paper?

A. Yes.

Q. When you signed it, was it read to you? Did they read it to you?

A. Read it all.

Q. Did Mr. Bailey or Mr. Devereux read it to you?

A. Yes, he read it.

Q. Did you understand it when he read it?

A. No, me don't understand.

Q. You signed it and did not understand what you signed?

A. He read to me.

Q. Did you listen and did you understand it? Did you know what was in here when you signed this? ~~What~~ What did he say?

A. I don't understand everything.

Q. Did you understand what was in here when you signed this?

A. Sure. Everything English I not understand.

Q. You did or did not understand it? Which?

A. Sure, not understand everything.

Q. All right. Mr. Kwiatkowski, who was it that told you that unless you said that Tony Horton got eight
667 hundred dollars from you that you would go to jail for five years? Who said that?

Mr. Ward: I object, your Honor. He did not say that.

The Court: Ask him first whether anybody said that to him.

Mr. Balaban: Q. Did anybody say that to you, that you would go to jail for five years unless you said that Tony Horton got eight hundred dollars from you?

The Witness: A. I no remember.

Q. Do you remember about that?

A. What you mean by five years?

Q. Was it somebody from the Government that told you that unless you said Tony Horton got eight hundred dollars or six hundred dollars, you would go to jail for five years?

A. No, I don't remember this.

Q. You don't remember that?

A. No.

Q. You were with the police or agent when you came to see Tony Horton in this building last June or July, weren't you?

A. I was? I no remember.

Q. Don't you remember you came to see Tony Horton with an agent?

A. Came couple of times, could not tell you.

Q. Did you go once with an officer from the Alcohol Tax Unit?

A. I say couple of times, I was.

Q. Was there a policeman with you or an agent?

A. When they arrest me? The Government.

Q. Yes, but who was with you when you came to see Tony Horton?

A. He was Government.

Q. Do you see him here today?

A. I see him first time.

Q. When you went to see Tony Horton, did you go to see him with a Government man?

A. Government arrest me.

Q. In June when you went to see Tony Horton in this building, who was with you?

A. Government.

Q. A Government man? What was his name?

A. Don't know. Maybe tell me his name, but don't know.

Q. Where did you see him for the first time?

A. I think I see him for the last year.

Q. Did he come to your home?

A. He look me up couple times.

Q. Did he come to your home?

A. He look for me and I tell him, I look for your office.

Q. Did he find you—

A. No find me, I go some place sometimes fifty cents to sleep. No find me.

Q. You did go to Tony with this Government man, did you not?

A. Government bring me here. Mr. Horton was talking.

Q. Did you not come to my office with that Government man in June or July of last year?

A. I no remember.

Q. Do you remember you came to my office, don't you?

A. I was couple of times, I remember.

Q. Last June or July you came with a Government man and said this Government man was your nephew?

A. I remember this.

Q. That man was not your nephew, was he?

A. I remember this.

Q. Was he or not?

A. No.

669 Q. You were not his uncle, were you?

A. No uncle. He take me right on the street. I don't want to talk so much to the Government. He look me up about two weeks, he say.

Q. He held you for two weeks?

A. The Government looked for me.

Q. Where did the Government hold you for two weeks, in jail?

A. He no look for the jail.

Q. How long did they hold you?

A. He wants to bring me here.

Q. Did he bring you here?

A. Sure he bring me here.

Q. Then you came to my office?

A. No, he was before. I tell the Government.

Mr. Ward: He means he was arrested.

A. The Government take me up. He tell me—

Mr. Balaban: Q. I will ask you again. Walter, did you come to my office? Do you know where my office is?

A. Yes.

Q. The last time you were there, remember?

A. Yes, I remember.

Q. Were you alone when you came to see me the last time?

A. Myself.

Q. Were you alone, by yourself?

A. Sure.

Q. Didn't you bring somebody with you?

A. No bring. Sometime bring my sister.

Q. Weren't you in my office with a man you said was your nephew?

The Court: He testified to that.

Mr. Balaban: Q. After you were in my office, you went over to see Tony Horton with that same man you 670 said was your nephew, is that right?

A. Yes.

Q. Now, did not that man and you and Tony meet in this building on the eighth floor?

A. Maybe, I not remember so good.

Q. You don't remember so good?

A. Not remember so good everything.

Q. Did you not have a talk with Tony and with that man whom you said was your nephew, in June or July of last year in this building?

A. Not remember.

Q. Is it not a fact that on the eighth floor of this building, this man you said was your nephew, and you and Tony talked, and in that conversation that man said to you, "Tell Tony in his presence whether or not you gave him six hundred dollars", and you said no; Isn't that right?

A. You ask me to say—I spend for that case ten hundred seventy-five. He was a Government. He say, "You say you want a car?" I tell him that car was bother. Any new case, he comes back. I say, the Government check no case and come back.

Q. Did you tell Tony Horton in June or July of this year, that you did not give him six hundred dollars in the presence of that man?

A. You got to say I spend ten seventy-five, and that case comes back to make truth.

Q. How much of that money did you give Frank Hodorowicz?

A. I give nothing. You gave me, remember? The bank give you, you give me. My sister was there.

Q. How much money did you take from me that day?

A. Thirty-seven fifty, remember?

- Q. Who got that \$3750?
- 671 A. You take it right in the bank, remember?
- Q. How much did you get?
- A. You charge eight hundred.
- Q. Did you give me the money?
- A. I don't know where she go. What do you think? I short money. You think the bank short money?
- Q. Is it not a fact, Mr. Kwiatkowski, that money was taken by Frank Hodorowicz and Frank Hodorowicz paid me two hundred dollars at the bank and gave you the rest of the money?
- A. No.
- Q. Yes or no?
- A. No. Mr. Balaban, believe me, you take it right there yourself in bunches. I remember my money, you take it right there.
- Q. How much did I take?
- A. Because you quick take it.
- Q. How much did you have? How much did I give you?
- A. Don't hear so good.
- Q. You did not hear me?
- A. Not so good.
- Q. How much did you have in your pocket when I left the bank that day?
- A. Did not count it. I left to you, my lawyer.
- Q. Is it not a fact, Mr. Kwiatkowski, that I left you and your sister and your niece and Frank Hodorowicz in the bank when I left that day?
- A. Mr. Balaban, I no look for him.
- Q. Answer that yes or no.
- A. I look for you, you care for me. If he wants to come thousand times, I never give him my money, he never give me. You showed it to officer, came to the window and they give you the money.
- Q. When you went to the bank first, they would not give you the money, is that right?
- 672 A. They no give to me.
- Q. When I left the bank that day, did I leave alone or with somebody else?
- A. Why, I can't get you. Say it again.
- Q. Did I leave alone when I left that day? Did you stay in the bank?
- A. Who, me?
- Q. Yes, you?

A. You remember where come, I come.

Q. When I left, weren't you in the bank?

A. My sister and I come when you come.

Q. How much did you have left?

(No answer.)

Q. After you took the money out of the bank that day, how much cash did you have?

A. \$800.00.

Q. How much did you have left?

A. Left?

Q. Yes?

A. You know, thirty-seven, fifty, you know, you took \$800.00. You know how much left.

Q. You said there was thirty-seven fifty there. You were \$800.00 short?

A. Yes.

Q. Is that right?

A. Yes.

Q. That left you \$2900.00, is that right?

A. That is right.

Q. What did you do with the \$2900.00?

A. You knew.

Q. Did you give that money to Frank Hodorowicz in my presence?

673 A. My sister was there.

Q. Your sister was there. Didn't you give him all the rest of that?

A. No, my sister, my sister was there.

Mr. Ward: I submit that this witness answered.

The Witness: You remember my sister was come.

The Court: He has answered it.

Mr. Balaban: Q. When you were arrested last June, isn't that right, Mr. Kwiatkowski?

A. What?

Q. You were arrested last June?

A. Last year Government came. I say it was last year, the Government—

Q. The Government came to you last June?

A. Yes.

Q. Your trial was August, 1938, is that right?

A. 1938, sure.

Q. You had the hearing before the Commissioner, and about seven or eight months later you were arrested, is that right?

A. Yes.

Q. All right. Now, did you ever make bond in that case?

(No answer.)

The Court: Q. Did you ever give a bond in that case?

A. Bond, I got bond.

Q. Do you know what I mean by a bond? Did you ever give a bond?

A. Sure.

Q. So as to take you out of Jail?

A. Mr. Horton put the bond.

Mr. Balaban: Q. No, last June, Mr. Horton didn't.

A. I have told him a dozen times.

The Court: Q. How many times did Mr. Horton—

674 A. What?

Q. How many times did Mr. Horton give you a bond?

A. How many times?

Q. Yes?

A. Give me just once.

Mr. Balaban: Q. Once?

A. That is all.

Q. That is when you were first arrested?

A. He ain't give me just once.

Mr. Balaban: Is the indictment here in United States versus Walter Kwiatkowski?

Mr. Ward: Yes.

The Witness: The same thing.

The Court: Don't answer. Don't talk.

Mr. Balaban: Q. You were indicted in a case on June 2nd, 1939. Do you know that?

(No answer.)

Q. Do you know what the word "indicted" means?

Mr. Ward: He said the case of—

Mr. Balaban: Mr. Ward, I have not said a word to you. I will ask you to please—

The Court: Let Mr. Balaban go ahead.

Mr. Balaban: Q. Will you explain to him what the word "indictment" means, Mr. Secretary?

Q. What has he said?

A. No give me no papers.

Q. You were arrested?

A. Never give me no papers or nothing.

Q. You were arrested seven or eight months later

after you were before the Commissioner, isn't that correct?

(No answer.)

675 The Court: Is it a fact?

Mr. Balaban: It is a fact, Your Honor, that an indictment was returned on June 2nd, 1939 in this District, and the man has never been arrested or arraigned or tried, and on January 12th of this year the case was stricken off with leave to reinstate.

Is that to be denied by the Government?

Mr. Ward: No, sir.

Mr. Balaban: Will you so stipulate?

Mr. Ward: Yes, sir.

Mr. Balaban: Q. Now, what do you expect to gain by testifying here today?

A. I no understand.

Q. I will ask it this way. What has the Government promised you that they would do to you?

A. I don't know what you say, the question.

Q. Did the Government tell you you were going to jail?

A. The Government, you say that case is coming back.

Q. The case is coming back?

A. Yes. The case come back. I say for you, you remember?

Q. What did they tell you would happen to you if you did not testify in this case?

A. In that case?

Q. What would happen to you?

A. What happened to me, how much spend money for that case?

Q. What did they say, if anything, would happen to you, if you didn't testify in this case? Did they say anything?

A. Well, I will tell you, you were the Government, you won't say me how much me spend for money for that case.

Q. What did the Government say to you? What did they threaten to do, put you in jail if you did not testify here?

Mr. Ward: I submit, Your Honor,—

The Witness: The Government would—

676 Mr. Ward: Wait a minute. I don't see how a man can answer a question like that, what did the Government say. What does that mean? Does that identify

any person he is talking about? If some person said something, he doesn't know what that means. The witness is trying to answer these questions.

The Court: Objection sustained. Maybe you had better ask if an agent or anybody representing the Government made him any promises or any threats.

Mr. Balaban: Q. Did anybody make any promise to you?

A. Who?

Q. Anybody from the Government?

A. You never say, say you promise it. I got, I say was the case. You got your car back.

Mr. Ward: He is talking to you.

Mr. Balaban: Q. Anybody from here, I mean the Government men? Any of these men here?

A. Yes, Government, you say that the case, my case come back. Maybe get your car back.

Q. When they went out in June of last year and had you, picked you up again, did anybody tell you that you must testify here?

Ask him, Mr. Interpreter, if you will.

Just what did he just say?

A. He said he is all nervous, nervous.

Q. Yes. Did they promise the car back to you? You understand me, don't you?

A. I don't know where you show paper. You show me men. I don't know. You are the Government, a couple of dozen Government bother with me.

Q. A couple of dozen of what?

A. I say I remember when lawyer I had, he was three times Government stopped me. You remember. I telephoned at your office.

Q. Do you remember about a couple months ago when you met Tony Horton in the saloon on the south side?

677 A. Saloon on the south side?

Q. A saloon. You know what a saloon is, don't you?

A. Yes.

Q. You met Tony Horton in the saloon. Did you not?

A. Yes.

Q. A couple of months ago, you remember that, don't you?

A. I remember.

Q. Don't you remember that Tony Horton talked to

you in that saloon. You talked there, didn't you? Tony met you?

A. Sure, I remember.

Q. Didn't Tony say to you, "Walter, why did you say that you gave me that money?"

A. Yes.

Q. And you said, "Yes, policeman said to me if I don't say that I go to jail for five years." Didn't you say that?

A. I don't remember this. I remember, I can remember where they keep me. It might so I take money there. I say sure, they take, because I lost money, \$1,075.00 I lost.

The Court: Q.—When the Government man, when Mr. Bailey talked to you, did he talk to you in English?

A. You know, I talked English. I am so nervous.

Q. Did he have an interpreter there at the time he talked to you?

A. To Bailey?

Q. Mr. Bailey, yes.

A. He talk.

Q. Did he talk to you in English or Polish?

A. In Polish. I want to go home four o'clock. You make me nervous.

The Court: I think you can go home.

Mr. Ward: Just a minute.

The Court: He is not must help to us.

678 The Witness: Mr. Lawyer, he was talking so rough, he make me sick.

Mr. Ward: Just a minute, Your Honor. I may be very optimistic, but I would like to try a few questions.

The Court: Do you want him to come back tomorrow morning?

Mr. Ward: I just want to ask him. He made a little remark a moment ago that I am interested in. I would like to ask him about it.

Redirect Examination by Mr. Ward.

Q. You said your case came back, Walter. What did you mean by that?

A. The case.

Mr. Ward: Ask him that in Polish. He said his case came back. What did he mean by that.

Q. All right.

A. They are bothering.

Q. All right, just a minute.

A. They are bothering,—I was bothering my lawyer about the car."

Q. Yes.

A. And he said that if I would bother about the car that may bring the other case back.

Q. That is it. And was that Mr. Balaban that you talked to?

A. No, just the reason I told him.

Q. Yes?

A. I say couple of times Mr. Balaban. I told him I needed the car back.

Q. Yes?

A. Mr. Balaban he say, "If you want car back, Okay. He come back." Well, I no more. I stopped. I get afraid. Well, I have a mortgage. I sent man over there, Mr. George, old man.

679 Q. Yes?

A. Talk. He say he want car. You buy that car. He want car. He give you for nothing. That case, he come back.

Q. I see.

A. He was come in. He was saying, "Give me my money. Give me my mortgage. Give me my money." Well, I go back again. I go to work. He bother with me. I got to start work. He bother with me. You stop me from working. I pay him. I pay him quick \$375.00 for mortgage. I no more bother for the Government. I no more bother for the lawyer. I pay mortgage quick.

Q. The car was gone?

A. Yes.

The Court: He spoke beautiful English.

Mr. Ward: That is all right.

The Court: You may get the facts here.

Mr. Ward: Q. When you left the Commissioner's Office, Walter, Mr. Kwiatkowski, you thought the case was all over, didn't you?

Mr. Balaban: I object to what he thought, if your Honor please. I ask that that be disregarded, that this witness thought.

The Court: He understood.

Mr. Ward: Q. When you were before the Commissioner, the white-haired man, Mr. Balaban was your

lawyer. Then you went home. You thought the case was all over, didn't you? Is that right?

A. Sure, that is right.

Q. You thought it was all over.

The Court: Better find out if someone told him the case was dismissed.

Mr. Ward: Q. Did someone tell you the case was all over?

(No answer.)

Mr. Ward: Q. You know that white-haired man?

(No answer.)

680 Q. Ask him when he was before the white-haired man if anyone told him his case was all over now, he could go home?

A. I never say, because I saw man. He want that car. I saw man.

Q. I am speaking about your case now. Forget the automobile. About your case, when you left the room there that day, did anyone tell you that your case was all over about the still?

The Interpreter: Do you want me to ask him that question?

Mr. Ward: Yes.

A. I knew that myself. I knew that myself. When I was at the lawyer the lawyer said the case was dismissed. When I paid \$1,050.00 I knew that it was all over then.

Q. I see. Then about six or seven or eight months after that, after your lawyer told you that the case was all over, someone came out and arrested you again, did they, Walter?

A. Yes, arrested about a year.

Q. About a year?

A. Yes.

Q. Then, they brought you down to this building again, is that right?

(No answer.)

Q. They brought you to this building again when you got arrested?

A. Yes, across the street.

Mr. Balaban: Are you through, Mr. Ward?

(No answer.)

Mr. Balaban: Q. Are you through, Mr. Ward?

Mr. Ward: No, not yet.

Mr. Balaban: I submit I ought to have a response from the District Attorney.

Mr. Ward: I said not yet. Not yet. Just give me a minute.

The Court: It strikes me this witness understands 681 when he wants to understand; but he does not understand when he doesn't want to understand.

Mr. Ward: Yes. I submit I am doing the best I can.

The Court: I know you are. You are doing well, and getting good responses, better than the rest of us can. I wish Mr. Balaban could do the same. He won't answer Mr. Balaban's questions the way he does yours.

Mr. Ward: Maybe he doesn't understand his as well as he does mine.

The Court: Let us go along.

Mr. Ward: Q. When you were out there to the bank to get the money you had, did you have your bank book?

A. I no have the bank book.

Q. Where was your bank book?

A. Bank book, he was to the Government. He took it.

Q. And when you got out to the bank you didn't have your bank book, did you talk to a man out there?

A. Where, at the Government?

Q. No, at the bank?

A. In the bank?

Q. Yes?

A. Yes, I talked.

Q. He knew you, didn't he?

A. What?

Q. The man at the bank knew you?

(No answer.)

Q. When you came there he said, "How do you do, Mr. Kwiatkowski?"

A. Yes.

Q. At the bank, the man at the bank?

A. I don't, I don't have the book.

Q. Not having your book, did he have you sign some papers?

A. No, not sign. I have a lawyer, lawyer he was 682 helping me. We took this, you know, he took \$3750.00.

Q. Now, your lawyer talked to you about getting that money out of the bank right away, didn't he?

A. Yes, he talk.

Q. In a hurry?

A. Yes, he talked to me.

Q. You were in a hurry to get that money out? You know what I mean?

A. Yes, I was in a hurry.

Q. How did you go out there, in an automobile or in the street car?

A. What is that?

Q. How did you go to the bank to get the money, in the automobile or in the street car?

(No answer.)

Q. Did you go on the street car or did you walk out?

A. Well, I am not so far. I live there. I could walk.

Q. You were in this building? You were next day at nine o'clock brought there?

A. I was coming. My sister she was come.

Q. All right.

A. My sister, I bring.

Q. Here is what I want to ask you. Before you got out of jail—

A. Yes.

Q. (Continuing.) —on the bond?

A. Yes.

Q. Did you pay Horton any money, or was it after you got out that you give him the money?

Mr. Ward: Put that in Polish, will you?

The Witness: I don't remember, but it seems to me—

683 Mr. Ward: Q. Just a minute now, just a minute.

A. I don't remember, but it seems to me that it was after the time that I was taken to the jail.

Q. All right. Now, ask him if he went out to the bank with his lawyer, Balaban, in Balaban's automobile?

A. He doesn't remember. He was in the bank a few times with Mr. Balaban in his car.

Q. In Balaban's car?

A. That is right. Give me a ride.

The Court: Q. Ask him who got the money from the police officers?

A. When he was arrested he doesn't remember. When he was arrested he don't know what he had with him at that time.

Q. I want to know, ask him if the police officers took some money off his person?

A. He doesn't remember. He felt bad at the time.

Mr. Ward: Q. All right, now then—

A. I got two weeks.

Mr. Ward: Tell him to keep quiet.

Recross Examination by Mr. Balaban.

Q. Mr. Kwiatkowski, isn't it a fact that the first place that you went when you got out of jail with Tony Horton was to Frank Hodorowicz's place?

The Court: Q. What have you got there? Let me see it?

A. Just get away. I take it out.

The Court: That is all right.

Mr. Balaban: Q. Mr. Kwiatkowski, isn't it a fact that you went from the jail, when Tony got you out on bond, right straight to Frank Hodorowicz's place?

A. You are too far, Mr. Lawyer. Come up close. I don't hear so good.

684 Q. Where did you go when you got out of jail, with Tony Horton? Did you go any place?

A. I couldn't tell you. I remember somebody who took me. I don't know who.

Q. Didn't Tony Horton take you to Frank Hodorowicz's place the day you got out?

A. I couldn't tell you. I remember somebody took me.

Q. Didn't you go to Frank Hodorowicz's place the day you got out?

A. I don't know. I couldn't say right.

Q. What?

A. I don't remember.

Q. Didn't you and Tony take the street car and go out to Frank Hodorewicz's place that day?

A. No, I don't remember.

Q. That you made bond?

A. I don't remember whether street car, train or elevated, I don't remember.

Q. You did go with Tony, though, didn't you?

A. What is that?

Q. You did go with Tony Horton?

A. Tony Horton?

Q. Tony Horton, that is the colored man?

A. Yes, Tony Horton carried me.

Q. Where did he carry you?

A. He carry me right in the office and everything. I don't remember so good.

Q. No. I am asking you about the day you got out of jail. The first place you went was to Frank Hodorowicz's hardware shop, isn't that right?

A. I don't remember, sir. You know, Mr. Lawyer—

Q. You answer my question. Where was the first place you went when you got out of jail? Whom did you go with?

685 A. I understand. I don't remember, because I feel very bad.

Q. Did you go to Frank Hodorowicz's place at any time?

A. I couldn't tell you. I don't know.

Q. All right, now. You wanted me to have your sister sign some papers to get that money out of the bank, isn't that right.

A. Not that day.

Q. Not that day?

A. Yes.

Q. But later on you did, didn't you?

A. You know—

Q. You wanted that later on, didn't you?

(No answer.)

Q. Didn't you want me to try to get some papers for your sister to draw the money out of the bank, and I said I would not do it because your sister would get in trouble?

A. Yes.

Q. Yes. Then, you went—Just a moment now. And after I put you out of my office you went to Frank Hodorowicz's lawyer, Joseph Struett, isn't that right? Tell the Jury that.

A. I don't remember.

Q. Who was your lawyer after you had me?

A. Who was the lawyer?

Q. Whom did you go to after you saw me? Another lawyer?

Mr. Ward: You stop putting these statements—

The Court: Just a minute. He has a right to cross-examine.

The Witness: I didn't have any lawyer. You took care of me, you.

Mr. Ward: Just talk to him—

The Court: Sit down. He has a perfect right to ask the witness.

Mr. Balaban: Q. Who sent you to Joseph Struett now, a lawyer; do you know him?

A. Who?

686 Q. Joseph Struett, a lawyer?

A. He was, you know, he was in a machine.

Q. Did you go to see any lawyer after you saw me?

A. No.

Q. You didn't see any other lawyer?

A. Mr. Horton, Tony Horton, he carry me for you, for you, both of you carry me.

Q. Just a moment. You remember you wanted me to have your sister sign some papers. I said, "No". Is that right?

A. I don't remember. What is the question?

Q. You remember that, don't you, Mr. Kwiatkowski?

A. I don't understand it well.

Q. Didn't you have your sister at my office?

A. Yes.

Q. Didn't you hear me tell your sister I would not have her sign those papers. You wanted me to have her sign them.

A. I don't know what you want signed.

Q. Didn't you leave my office and go to Frank Hodorowicz's lawyer, Joseph Struett?

A. I don't remember.

Q. When you were in my office with that policeman that you called an agent, didn't I tell you that another lawyer called me, and I told him that I would not let you sign those papers because your sister would get in trouble?

(No answer.)

Q. Isn't that right? Didn't I tell you and that Government man that?

A. I remember, sure, I remember. I remember.

Mr. Balaban: That is all.

The Witness: I remember, because sister ain't talk to you.

The Court: Just never mind. I have examined the papers the witness handed me. They are miscellaneous receipts for doctor and hospital bills dated from 1926 on.

687 Mr. Ward: That is all, Mr. Kwiatkowski.

(Witness excused.)

WILLIAM E. SCHUMACHER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is William E. Schumacher, I live at 7010 Cornell Avenue, I am in charge of new account department, and purchasing supplies in the South Chicago Savings Bank. I have the records of our bank of the Walter Kwiatkowski account. This card shows the account of the South Chicago Savings Bank with Walter Kwiatkowski, A. Dzinbinski, No. 74437. There is a levy against the account now, showing a balance of \$400 odd dollars. There is a stop put on by the Government, sometime in 1939. On August 1st, 1938 the ledger shows there was a balance of \$4,500.71. On August 26th it was the same. On August 31st it was \$50.71, it was reduced from \$4,050.00 on August 31, 1938. On that day there were two with-drawals, one for \$3,750.00, and one for \$700.00, the first one by Kwiatkowski and his sister, and the second just signed by Kwiatkowski. I do not know Kwiatkowski, the cashier probably does, he is on the sick list presently. The \$50.00 balance remained the same until September 21st, 1938, when a deposit of \$500.00 was made making a total balance of \$550.71, that balance continued until October 5th, 1938. The lien was placed on the account by the Government on October 19th, 1938, so the amount is now held subject to the Government lien.

Cross-Examination by Mr. Stewart.

The account was originally opened in 1931, there was an equal number of deposits and with-drawals, I would say. Of the two with-drawals on August 31st I don't know which one was made first, although the book-keeper entered the \$3,750.00 one first on the card.

(Witness excused.)

688 CHARLES MEYERS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Charles Meyers, I am a farmer at Lenore, Illinois, I have lived there all my life. My farm is about two miles north of Lenore, a mile west, in La Salle County. I am 52 years old.

In October of 1935 an illicit distillery was found on my farm. I know a man named Leo Vitale, the time and place I met him, was when he came down to the farm. There is a man by the name of Eddie Murray came first. Then later he brought this Mike Simanello, from Streator down. That was the first man that was down there. About two months later I saw Leo Vitale. The still was on the farm before I met Leo Vitale. I had a conversation with Vitale same time later. I saw Vitale at the farm several times, probably fifteen times. He was around there, they were building vats and hauling in sugar. Vitale would drive to the farm in a Ford car. He was later arrested on my farm. They finally built the still and the vats. I know it operated just a short time. It was raided by the sheriff of La Salle County. I testified in the Vitale case before the Grand Jury. I know Daniel Glasser. At that time he was representing the Government, he questioned me before the Grand Jury. I told the Grand Jury substantially what I am telling this Jury about Leo Vitale. I came to the farm after the still had been raided. Leo Vitale never came to buy pickles. Leo Vitale was arrested when he came in there. I never had any business transactions with Vitale in which he was trying to buy pickles from me.

Cross-examination by Mr. Stewart.

Before the Grand Jury Mr. Glasser asked me to tell him what I knew about the still out there. I told him the truth, I did not with-hold any facts. I did not tell any
689 falsehoods. I don't know if he acted as an able District Attorney. I never had much dealings with any attorneys. I know that Leo Vitale was shot on my farm. I heard the next morning that he was shot by the sheriff.
(Witness excused.)

Mr. Stewart: Mr. Goddard, you were already sworn, you don't need to be sworn again.

Witness sworn.

Mr. Ward: Pardon me, I will with-draw this witness for a minute, Your Honor, I will have to with-draw this witness because the file I want to use is not here.

Mr. Stewart: Judge, I would like to make this objection, if I may, while we are waiting for the witness, oh he is here. That Mr. Goddard, who is here, has been on the stand. Is the court going to allow the prosecution to put witnesses back on where they have been on.

The Court: Where they have been asked to step aside.

Mr. Stewart: He was not.

Mr. Ward: Well, these are specific cases, and I called them back to keep the testimony in chronological order, that is the only reason for that.

Mr. Stewart: There is an objection to it.

The Court: I follow that procedure. Objection over-ruled.

BERNARD B. CLOONAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Bernard B. Cloonan, I am a special investigator, Alcohol Tax Unit, I have been with the Government a little over eleven years. I investigated and developed 690 the case of United States versus Leo Vitale and others, District Court #30590. It was a case which involved a still that was found on a farm being operated by Charles Meyers. The investigation was made during the spring of 1935. My investigation disclosed that at one time the still had been owned by Mike Simanello and Dominick Sabatino, and later it was bought by Leo Vitale. Leo Vitale, Sam Vitale and Pedro Mando had only been operating that still from about August until it was seized in October, 1935. I made out a full and complete report of my investigation and submitted it to the District Supervisor for submission to the United States Attorney. I was afterwards called by Daniel Glasser, the Assistant District Attorney and we discussed the case. It was presented to the Grand Jury on May 9, 1938, the first time

I had talked to Mr. Glasser about the case was sometime the latter part of October, 1935. I did not testify before the Grand Jury. I was not called when this case was called July 11, 1938, before Judge Wilkerson. I was not notified to be present. Between the time of the seizure of the Meyers Farm and the disposition of the Vitale case before Judge Wilkerson, I did not participate in any other investigation of Vitale, which involved him in any other still. I know there were such investigations. I talked to Vitale after his arrest, he wouldn't give any statement, he denied having anything to do with the still. These pictures that you show me look like the pictures of the still. They were taken three or four days after the seizure of the still. Two or three months after the disposition of the Vitale case I learned about it. I was not present when the case was disposed of as to Michael Simanello, I was not notified to be present.

Cross-Examination by Mr. Stewart.

I went to the Grand Jury room, or just outside of it, and an indictment was returned by that Grand Jury. I have been a government man since December 1, 1926.
691 I am a special investigator, formerly a prohibition agent.

Q. Well, the Government does not have to prove their case beyond a reasonable doubt before the Grand Jury?

Mr. Ward: I object if your Honor please—

Mr. Stewart: Why should he object, your Honor, he is just trying to—

The Court: The question of law?

Mr. Stewart: No, your Honor, I want to show—may I be heard on this just a moment?

Mr. Ward: I will withdraw the objection.

Mr. Stewart: I would like to be heard, Mr. Ward.

Mr. Ward: All right.

Mr. Stewart: It will only take a moment.

The Court: All right. All you have to present to the Grand Jury is some evidence.

Mr. Stewart: Pardon me?

The Court: The District Attorney does not have to prove it's case before the Grand Jury.

Mr. Stewart: I want to show, if I may, there is nothing unusual, an agent comes down with the witness, and where the witnesses have first-hand knowledge they go before

the Grand Jury, and the agent waits outside. There is nothing unusual about that.

The Court: Proceed with your question.

The Witness: There is nothing unusual about that, no sir, and if I have enough evidence to create probable cause before a Grand Jury, and an indictment is returned, the fact that I went in and gave testimony, or not, does not matter. So there is nothing wrong about the conduct of that case in Mr. Glasser's hand at the time I spoke of when I went down with my witnesses before the Grand

Jury. My superior officer is Mr. Yellowley, I have 692 worked on a number of cases. Some times agent

Loeser or agent Jackson accompanied me on my investigation of the Vitale case. They are regular investigators. I worked on a case of a person brought back from Waupun, Wisconsin. His name was Kanzenbach. I was not looking for him in Waupun, Wisconsin. I didn't look for him at all, I sent the marshal from Milwaukee up after him. I did not report to Mr. Glasser that I was unable to find him. I don't know if Mr. Glasser went up himself and got the prisoner. I know about it. I don't know he went up there himself. I can tell you the story of that if you want to hear it. There was no feeling that grew up because of that, between Mr. Glasser and myself. I have no feeling against Mr. Glasser now.

Redirect Examination by Mr. Ward.

I didn't say Mr. Glasser went up to Waupun. I don't know that he went up there. I don't know whether he did or not. There was no witness up in Waupun on the Vitale case.

(Witness excused.)

FRANCIS J. CAMPBELL, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Francis J. Campbell, I am a special investigator of the Alcohol Tax Unit, I have been with the Government since March 15, 1920. I know the defendants

Glasser and Kretske, and in my work as investigator from time to time I would see both of them.

I made an investigation of a violation at 2524 South Western Avenue, in the rear, in the year 1936. We went to that address and found a distillery. Our investigation later disclosed that Louis Kaplan, using the name of

Davis—

693 Q. Louis Kaplan, the defendant in this case?

A. Yes, sir.

Q. Used the name of—

A. Davis.

Mr. Stewart: May I have that stricken? He said our investigation later disclosed that certain things—

The Court: Our later investigation?

Mr. Stewart: Yes, sir, disclose something — because Kaplan is the defendant here, I don't know if he disputes ownership in that or not, but the man was Boguch who attended that still that they had, and he said he was not caught there, and he wouldn't give the Government any information.

The Court: I think you have to bring out the facts.

Mr. Stewart: Yes, sir, the facts, that is what we want.

The Court: Yes, sir.

Mr. Stewart: If he will save time, and will leave out conversations with people not in their presence.

Mr. Ward: The Court wants you to show how Kaplan was connected with it rather than conclusion that he was connected with it, how you discovered that.

A. Well, Kaplan rented the premises of Frank J. Hill, who was the engineer for these premises, also bought coal from the Blaster Coal people.

Mr. Stewart: Your Honor, I move to strike that.

Mr. Ward: The theory these statements were made out of the presence of the Defendants, there is no question on one theory that is a good objection, but this was offered to show a violation of the investigation which was brought to the attention of one of the parties in this case for prosecution, and it will all be connected up, it is an exception to the rule.

The Court: Can you connect these defendants with that still, operating it?

694 Mr. Ward: Yes, sir.

The Court: You had better prove it, as a matter of fact.

Mr. Ward: Yes, sir.

Mr. Stewart: Bring Mr. Hill in, if he is the one who has the facts.

Mr. Ward: I am now trying to show just as a fact this man made the investigation, that is the fact I am trying to establish in this record, and what that investigation consisted of.

The Court: And what he learned from that investigation?

Mr. Ward: That is right, that is a fact.

Mr. Stewart: Your Honor, may I be heard, because we think we should have Your Honor's ruling. There will be other cases like this. Here is the point, as I understand it, Mr. Glasser is going to be criticized for not indicting Kaplan, or the Grand Jury will be criticized for No Bill-ing Kaplan. Mr. Glasser is going on the stand and explain this case, the Grand Jury came to the conclusion they didn't have sufficient evidence to use in Court. Now—

Mr. Ward: If there is going to be any extended argument—

The Court: Let him go ahead. I will stop him when I want to.

Mr. Stewart: Now, here is the point, Your Honor; if Kaplan were indicted in this case that they are talking about—

The Court: The jury may be excused for a few moments. I will hear you.

(Whereupon the jury retired from the court room.)

Mr. Stewart: Now, may I proceed, Your Honor?

The Court: Yes.

Mr. Stewart: If I am correctly informed now, take this case as an example, this Western Avenue still, these agents can easily, by their investigation, they can learn that certain people are owners of a still, and they go out in many instances and arrest the workers, and those 695 workers won't tell who the owners are. And then the agents work on, trying to find out who buys the coal, and who pays the gas bills, and who pays the rent, and if they are able to get enough of those circumstances they will have a case against the man who is accused of being the owner.—Kaplan,—these people—well, when that is brought over to the District Attorney's Office, then the District Attorney is charged with some little discretion, and the Grand Jury has some, and the Grand Jury hears the evidence. And in this particular case they heard the

evidence, and certain defendants were indicted, Kaplan was No Billed. Now the charge in this case, the general charge, as Your Honor said, in a conspiracy to defraud the Government, and that fraud consists of depriving the Government of the conscientious service of one Glasser.

If the Government can prove as they go along, and as they are attempting to, that they had a good case against Kaplan, and that case was given to Mr. Glasser, and then Mr. Glasser, by way of handling it, by suppressing some evidence, or in some illegal way the Grand Jury brought in a No Bill, and it was done because of the fact that there was some corruption, why those are circumstances which may show conspiracy they are trying to prove here. On the other hand, if all they know about Kaplan is that they have some rumors and some circumstantial evidence, where the evidence is not enough to warrant Mr. Glasser in trying to convince the Grand Jury the indictment should be returned, because he as a lawyer knows they don't have enough evidence.

Now, in this particular case, as I understand it, if the Government goes and brings in the evidence they had against Kaplan, it would be he had paid some coal for that Western Avenue still, and if I am correctly informed, that is all they could prove. And Mr. Kaplan, the investigation would show, had something to do with buying and selling coal as a broker, and that merely, on that alone, wouldn't identify him as an owner.

696 Now here is the point. You are trying a case before the Jury, and the whole process of this testimony like Mr. Campbell is giving, is to try to convince this jury the investigation showed Kaplan was the owner, and his investigation showed they had a case against Kaplan, and if we are confronted with his conclusions of what somebody told him, then we are presented with hearsay evidence, which Mr. Glasser could never use, the evidence they got, the evidence, for instance, of Boguch, he said Kaplan was one of the owners, Kaplan paid him \$40.00 a week, but on cross-examination it was demonstrated Boguch didn't tell that while Mr. Glasser was handling the case, was the point. Cross-examination of a witness who just gives you hearsay does not do you any good, because he does not claim knowledge of the thing, anyhow. So the Government is arguing upon circumstantial evidence, and those circumstances we are entitled to proof on those cir-

circumstances, just like we would if we were facing trial here, because they are trying to establish a train or chain of circumstances to indicate guilt. Now, if Your Honor is just going to permit the Government to put a witness on who gives hearsay evidence to establish Kaplan was the owner of the still, then show the Grand Jury No Billed the case, and then Mr. Ward will argue to the jury that Mr. Glasser had a good case, the Jury does not know Mr. Campbell wouldn't be permitted to testify, and all of this before the Court, if Kaplan were put on trial. That is my point.

The Court: Well, I think in your examination of your witnesses you ought to ascertain just what evidence they had, and required, in reference to this still, and which was furnished to Mr. Glasser.

Mr. Ward: That is right.

The Court: Either in the report or otherwise.

Mr. Ward: That is right.

The Court: You are limited to that, just. Bring the Jury in.

Mr. Ward: Before the Jury comes in, Your Honor, the fact you have not got a complete case in the Western 697 Avenue still does not mean some of that evidence can't be used in another case. In other words, a conspiracy to defraud the United States may lead to considerable ramifications as far as this Defendant Kaplan is concerned, and it, it is a circumstance.

The Court: Well, you want to take one at a time if you are going to prove Kaplan was operating the still, and that knowledge was brought home to Glasser that the evidence was submitted.

Mr. Ward: Regardless of proof beyond a reasonable doubt.

The Court: What is that?

Mr. Ward: Regardless of proof beyond a reasonable doubt.

The Court: Whatever proof you had was submitted to Glasser, you may do that.

Mr. Stewart: On this particular case, if I may say, because it is sort of a typical case there will be others like it, and we would like to have Your Honor's ruling, so we don't need to continue to repeat these objections. In this particular case I understand Mr. Hill was before the Grand Jury. Now, if they want to do it correctly, as I see it, instead of having Mr. Campbell, who is an investigator,

say what Mr. Hill said, they should bring Mr. Hill here. That is my point.

Mr. Ward: Mr. Campbell is a vehicle that contacted the District Attorney and supplied him with certain facts, and what the defendant did after he was supplied with those facts is a circumstance in this case.

The Court: How did he supply those? In the form of written report?

Mr. Ward: Verbal, no, verbal. Conversation with Glasser. He talked to Glasser about this case, as I understand, that is what the witness is going to testify to.

The Witness: We discussed the case over the report.

Mr. Ward: Isn't that right, Mr. Campbell?

The Witness: We discussed the case, the report was submitted to Mr. Glasser, and we later were there asking for subpoenas on different witnesses and discussing the case.

The Court: Was the information you had with reference to the operation of this still with reference to Kaplan all contained in that report?

The Witness: A. Yes, sir.

The Court: Why go any further than that?

Mr. Stewart: That is what would sum it up, Your Honor?

The Court: What is that?

Mr. Stewart: This would sum it up, Your Honor.

The Court: Yes, sir.

Mr. Stewart: Then when Mr. Glasser testifies he can explain what value the report had.

The Court: Did you supplement that report by any further information?

The Witness: In discussing, asking for subpoenas of various witnesses that identified the defendants in this case.

Mr. Ward: Your Honor, here is my theory,—I don't know—does Your Honor have my theory in mind in this—

The Court: As I assume, it is this, you contend Mr. Glasser was derelict in his duty and failed to perform his duty before the Grand Jury by not presenting sufficient evidence to that Grand Jury in his possession on which the Grand Jury would be justified in finding or bringing in an indictment.

Mr. Ward: That is just a small part of it.

The Court: What are the other angles?

Mr. Ward: That is just a small phase, there are many

other angles. For instance, this witness here, as I understand, will testify he talked to Glasser and told him about Kaplan, and tell us about his connections in this case when the matter was presented, and he had talks with him after the No Bill, as I understand that to be true.

The Witness: After the No Bill?

Q. Yes.

699 A. Well, right after the case was No Billed.

Q. You talked to him about it?

A. We discussed it.

Mr. Ward: Then at the same time, Your Honor, we expect to show by witnesses that Glasser and Kretske were with Kaplan at certain times:

The Court: You may do that. You may show their association, former conduct or any contact, show knowledge of anything of design.

Mr. Ward: But is it the thought of Mr. Stewart, and is it Your Honor's idea that I must prove that the Government has a case sufficient to convict the party charged of the crime by evidence beyond a reasonable doubt?

Mr. Stewart: That is not my contention.

The Court: No, all you have to do is prove there was evidence in possession of Mr. Glasser, sufficient for the Grand Jury to bring in a Bill or for the Commissioner to bind them over.

Mr. Ward: Of course, it is not the Government's contention in this case that in every case Mr. Glasser failed to present it, prove it,—

The Court: You mean—

Mr. Ward: It is not the Government's contention in every case.

The Court: No, those you have singled out and earmarked.

Mr. Stewart: May I say this, Your Honor? Conversation with the Investigator, Mr. Campbell, would give Mr. Glasser about what Mr. Campbell learned, wouldn't do Mr. Glasser any good unless Mr. Campbell had witnesses that were available, that is the point.

The Court: If he informed Mr. Glasser there was some evidence available, then I think they are entitled to know what Mr. Glasser's response was to that. Bring in the jury.

Mr. Ward: That is what I want to show. That is all.

Mr. Stewart: Well, the whole point now is, I object to

this witness telling second-hand information, like Mr. Hill, for instance, Your Honor, you wouldn't permit them to do that, Mr. Hill was before the Grand Jury, you see.

The Court: Well, we will go along here, and you make your objections, we will go into the proof.

Mr. Ward: I know we are certainly not in the dark on a simple proposition made out of the presence of the Jury, or defendants, are not admissible, but you don't mean I can't show or prove that as a fact that an investigation was made.

Mr. Stewart: I think I made my point, and I think the Judge understands what I have in mind. The question at issue in this particular bit of evidence would be was Kaplan one of the owners or operators of that still. Now it is going to be quite evident, I think, he was, because Boguch said he was,—but the Government don't have that evidence. Now maybe I am unduly alarmed, but it seems to me with a jury listening, if they are just going to listen to a lot of hearsay evidence that won't do Glasser any good, and does not support the Government's case. And I think Your Honor's suggestion his report would be better evidence than anything else as to what he reported, and let him say on top of that, if he told Mr. Glasser anything more.

The Court: Yes, sir.

Mr. Ward: I am perfectly willing to do that.

The Court: Yes, let us go along that line.

Mr. Ward: I am perfectly willing to do that.

Mr. Stewart: Your Honor, there is one more objection the tendency of the report, the report should be one he made, and he knows, for instance, he can't use a report that includes a lot of things he has no knowledge of.

The Court: It may have been a court file of this investigation, or other files.

Mr. Ward: Will you mark these Exhibits 79, 80 and 81.

The Witness: That is my signature on Exhibit 81, this is the report on case 4570-M. I did the compiling of the evidence and writing of the report. I talked to

Mr. Glasser about the report and its contents, in the District Attorney's office. We discussed the facts, the exact words of our conversation would be pretty hard for me to say, but I know we discussed the case as to the facts available against each defendant and the witnesses against each defendant. The discussion took place in Mr. Glasser's

office, on a number of occasions, particularly on October 15, 1936, that was soon after the seizure. The next time I talked to him I can't tell right off hand, I would have to go through my diary to find the other dates. I know Adam Widges was picked up later, but not arrested regarding the indictment in this case. There wasn't any indictment in that case.

(Witness withdrawn.)

VICTOR RAUBUNAS, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is Victor Raubunas, at the present time I am a prisoner in a Government institution in Milan, Michigan, serving a sentence for conviction in this Court. I was convicted on July 19, 1939.

I know a man named Louie Kaplan. I know the defendants Kaplan, Glasser and Kretske. I heard about Louie Kaplan before newspaper I see, I read about him and know that was September 10, 1935. I met him through Adam Widges. I knew Adam Widges since 1928. At that time I was in the tavern business at 6641-49 South Mozart Street, Chicago. On September 10, 1935 Adam Widges and Louis Kaplan came to my tavern, I talked to them. Well, he came over, he says how is business, I says, business alright. He says you don't make money, I said, no, I don't make no money, I make a living and pay my bills, and he says there ain't no money in this. I said well I make a living. That is Kaplan I am talking about. Then he says

we got a little business outside you could make money.
702 I said what kind of business? He said well, business, he says, in the still business. Well, I says, no such kind of any—government got whiskey and everything. Now, I says I can't do business now. I can't sell that stuff anyhow. He said but it is not that business, only the still, he says, we take care of that. Well then I says, I don't know, I can't go in the business. He says, don't worry, we do everything alright.

Q. Who said that?

A. Kaplan.

The Witness: Then I says I do know, I got to think about what to do about that. Well, he says, alright, we'll come later. He didn't come to my tavern back again. Come to my home after, at 6567 South Talman, Chicago. In the meantime I sold my tavern back on the 18th. On September 20, 1935 Widzes and Kaplan came to my house.

Q. What was said at that time and place?

A. Well, he says, you are ready to go in that business? I said, I don't know yet. Well, he says, if you are not ready, we know another man. I said, well, I don't know, I think about it. Louie says it is going to be a protected place, everything.

Q. Louie said what?

A. It is going to be protected, and everything. I don't have to worry, he says, cost \$1,000.00 to go in. Well, I have,—and I tell my wife, she said, no, you don't know, it is no good business. You get in trouble. Then I go and tell Louie. He said no, don't worry about trouble, no trouble at all. We protect the place. He says, I protect through Federal Building. He says, I got people over there. That is all he tell me. Well, I think about it, and I give thousand dollars. I give thousand dollars in my room, and Louie Kaplan put in his pocket, and going. He said, we'll see you again.

Q. Louis Kaplan said he had what, in the Federal Building?

703 A. He said we got protection, and got people in the Federal Building.

The Witness: He says \$1,000.00 cost me to go into that business. Then I give him \$1,000.00 then, and he said, "We come over. We see you." Then I guess in few days he come over back with car, to my home, the same parties, Adam Widzes was with him. Then he takes me to 2534 S. Western Avenue, Chicago, right in the rear, in the alley. Widzes and Kaplan were with me when I drove from my home to that place, nobody was there at that time when we got there. We went in the engine room, we stayed about fifteen minutes. Adam Widzes and Louie said, "This going to be your place."

Q. Who said that?

A. Adam Widzes and Louie Kaplan.

The Witness: We stayed about fifteen or twenty minutes, or longer. Then says this is going to be place. And then we go out again, and three days Adam Widzes start moving in. In about three days I came back there with

Adam Widzes and Ralph Boguch. I don't know if that is the same Ralph Boguch who testified in this case before I did. We started to work in that place, start to move in, and we start clearing up later. We start moving everything, the still they move out, and the lumber move out, and start working with lumber. Widzes and Boguch and myself help in the erection of the still at that place. I don't know how big a still we build. The still began to operate, it produced from 80 to 90-five gallon cans of alcohol a day. It operated about seven months, about six days a week. Besides those I mentioned, two fellows I don't know by name, Frank, and the other one, Boguch's father, he died, worked around that place. I know Stanley Slesur, he never worked there.

Q. Did you ever see Louie Kaplan around after that?

A. Yes, sir, he come there when Eddie Farber come over there. He come over about three times a week.

704 The Witness: I had a further conversation with Kaplan about that time about that still. Then we start working and taking that stuff out and the still out. It is no money, started argument, no money. They started argument, I told them it is no money.

Q. You started an argument with Kaplan, did you? Tell the Court and Jury what he said and what you said?

A. I started arguing, and Kaplan. It is no money. He said, Well, it is no money, it is protection. I said, "How much do you pay?" He said, "He pay \$430.00 a week for protection". I said, "We can't get much interest, or get our place back, get money back", and trouble start, arguing, and I quit.

Q. Kaplan said to you he paid the sum of—

Mr. Stewart: Your Honor, he is getting along all right without Mr. McGreal.

Mr. McGreal: I will withdraw it.

Q. What else was said?

A. He said he pay \$430.00. What you pay? He say \$30.00 goes to Police, and \$400.00 to Federal Building, to some big people. I say, "Who is big people?" And he wouldn't tell me. He says we pay protection." I said, "We make no money." He said, "You make money." I don't make no money. I go down, one day I walk out. I said, "I don't know, I don't want to because it is no money. You pay too big protection. You make no money." He said, "No, you make money." Then Louie said, "Don't

go, you make money." I said, "We make no money, we will make no money." I go out. I come for Louie my thousand dollars, I come all the time to Louie.

Q. You are referring to Louie, you mean Louis Kaplan?

A. Yes, sir. He said, "Don't worry, you make some money, you make some money, good place, and everything. I said, "I don't want to stay inside here". And I walk out.

Q. Victor, after that, did you have occasion to ride in an automobile with Louie Kaplan?

705 A. Yes, sir, I riding around with him.

The Witness: I was riding on Kedzie Avenue with him, this gas station, Troy and Ogden Avenue, Shell gas station; then he met some people on 12th Street and Kedzie. I drove down Kedzie with Mr. Kaplan three or four times. It was on a Friday or Saturday, was about December, and January or first of February, 1936, that is December of 1935 and January 1936. When I would ride with him I would get in the car at the gas station on Troy and Ogden Avenue, then he takes me to 12th and Kedzie, and let me on the corner, and he goes with the car, and turns west, then he turns again west, then start from the west Kedzie, going south again, then I wait for him sometimes, and sometimes walk home back, I walk up to Douglas Boulevard. These trips continued during the month of December, 1935 and January 1936 and February 1936, usually Friday and Saturday.

In January 1936 I have a conversation with Kaplan. I say, "Louie you might have paid no money, might to keep yourself, that money." He said, "No, I pay." I said, "Well, I don't believe it." "Why didn't you show me people yet? You say you use money. You don't have to see them people. Well, I find out anyway if you pay or not pay." Then he start mentioning names. He said big people in the Federal Building.

Q. Whose names did he mention?

A. He didn't mention name. He says big people, but I don't tell. But I see how it was Glasser and Kretske.

Mr. Stewart: I move to strike that.

Mr. McGreal: That may be stricken.

The Witness: He says big people down-town. February and March I come over to the District Court here, and I have a right to find out who is big people. And I goes to the Court February and March, I don't know how

many times, five or six. I came into the court-room, 706 various court-rooms in this building and I saw various lawyers, some lawyers arguing, and I hear mention Mr. Glasser and Mr. Kretske name.

Q. Did you ever see Mr. Glasser or Mr. Kretske in a courtroom in this building?

A. Yes, sir, I see.

The Witness: About March of 1936 I have a conversation with Kaplan. I was in gas station. Kaplan come over from his garage. The gas station was at Troy and Ogden. Kaplan comes from across the street, from his garage on Ogden Avenue. He says he has got a call from down-town from people. He says "You come down-town with me." I said, "I don't know", he said "Come on sit down. We going." Louie Kaplan and I go with his car down-town, he parks at Van Buren and Wells, then we walk, he says, "Come on we walk". Then we walk to Dearborn and Jackson and go in the Great Northern Hotel, well, I get in the hotel, Louie and I, and he says, "Stay by the door in the lobby."

Q. Louie told you to stay by the door in the lobby?

The Witness: Yes, sir, and Louie was go over about ten feet from me, and I see come out from the restaurant a nice young fellow, dressed nice, and he goes to see him, about the step, in the basement, I went next to the steps down-stairs. Louie met a man at the head of the stairs that led to the basement and Louie goes to him and talks to him going down-stairs. That man was Kretske, the defendant. Kaplan and Kretske talked upstairs, then go downstairs. And about ten or eleven minutes come up, Louie comes to me. I didn't hear the conversation that went on. Then Louie comes back and he says, "Let's go." I said "Who is that man Louis?" He says, "That is a big man, he is Kretske." He left. I says, "Who is this man?" Louie says, "It is a big man." I says "That is Kretske" and he left, that is all, he didn't tell me. Nobody was with us. I used to follow Louie Kaplan's car.

And I followed. I wanted my money, \$1,000.00. He 707 said he paid protection. I followed him, and I wanted to find out who he paid money.

Q. And then would you follow his car?

A. I followed two or three, about two weeks.

Q. Now, did you follow his car on a Sunday morning in April, 1936?

A. Yes.

The Witness: Well, I followed the car. I was in gas station, I parked my car half a block on Troy Street, at the gas station, between Ogden and 18th, that was a half a block from Kaplan's automobile agency. Well, I saw then, I see Louie come from gas station, and he call up in the gas station then, he sit down in the car, and I was in the gas station, and he says he meet some people on Douglas Boulevard and Kedzie, I didn't say nothing. I take a look in his car. He is going—he goes, turns Ogden avenue, to Kedzie,—from Troy and Kedzie Avenue—then to Kedzie. I go Troy up to 16th Street, 16th I think I see Louie is coming. And I go after that to the Douglas Boulevard, Douglas and Kedzie. And he parked his car past Douglas Boulevard. North of Boulevard on Kedzie avenue. I go ahead and I come back, and I park mine on Douglas Boulevard, right on the Boulevard, east of Kedzie, about two blocks. I get up from my car and walk to delicatessen store on the north-east corner of Kedzie and Douglas. I was in that store. Then I was stay there. And Louie came from north-west corner, I see Louie walk there. Louie walked to north-west corner, then I see car go out. This car came from the east and go west on the stop-light, and I see right in the window. I was in the window, that car stop and blow horn. Blow horn, light green car. I don't know what make that car. Then he was blow horn, and two fellows look, and Louie was there, and I see Kretske come, he drive car, and Glasser, was sitting over. Then light green 708 car, light go north-west corner, he open door, Louie get in the back, and go west. Then I see go west, and I wait little in delicatessen store, and I go south on Douglas in a church there on Kedzie, south-east corner, I go there. Well he come from delicatessen about five minutes I wait. I walk across the street, I walk south-east corner, of Kedzie avenue and Douglas, on church there. And I wait in the church, and see same car come out from the west, and stop on the south-west corner, and Louie get out and go into his car, and his car is going, and I go to my car, and go home. Nort Kretske and Dan Glasser was in that car when it came back. Louie get out and walked north to Douglas Boulevard and Kedzie to his car, and I walked to my car on Douglas Boulevard, east of Kedzie avenue, about a block and I go home. I didn't talk to Louie then.

Q. Now calling your attention to the second week of

May, 1936, did you again have occasion to go to that delicatessen store?

A. Yes, sir. I go to that delicatessen store.

Q. At the same corner? Douglas Boulevard and Kedzie?

A. That is right.

The Witness: It comes again about 10:30 Sunday nobody was with me I was myself, was there, the same thing. Louie was on the same corner, and black car come and same thing, he blow horn and I see them guys go and take Louis in the back and go west, and I didn't wait, I go home. The black car came from the east and going fast. Kretske was driving and Glasser sitting down. Kaplan got in the car and go west, and I didn't wait. I go home.

I was in Kaplan's garage in July 1936, Eddie Farber, Eddie Dewes, Kaplan, Adam Widzes and myself were there. Ralph Boguch came in there at that time. He said the Western avenue still had been raided, Kaplan said raided, it is nothing going to happen. I said "Now we got trouble. Now you pay protection and everything and you get trouble." He said "Don't worry about trouble, you don't worry about trouble. Let pinch, it is nothing."

709 Q. Kaplan said it is nothing?

A. Yes, sir. He says always go place make more. I start crying, I said, "Come got my money, everything, and got trouble. You pay protection." He said, "Don't worry. Don't worry. Everything be alright." Well we all go home, you know.

Q. All right. Now in August of 1936 were you at Louie Kaplan's garage again?

A. Yes, I was.

Q. And who was there this time?

A. Well, was Eddie Farber and same thing, Eddie Dewes was there.

Q. What did Kaplan say to you, and what did you say to him?

A. Well, Kaplan says, "Well now, we in trouble, will cost you money again." I said, "How much cost this trouble"? I say, "Louie, you pay so much protection. \$430.00 a month. Now, you want some more money again. He say, "This cost \$500.00." I said, "God, it is too much money. I ain't got no money. He said, "No, you got to have \$500.00." Five ways, \$500.00 apiece. I don't

know yet if people was more people, but Adam Widzes and I and Louie Kaplan was three—he says five ways, \$500.00 apiece. Well, I says, “All right, Louie. I bring it. He says, “Bring the \$500.00, and we forget about it. Don’t worry, bother you nobody. Nobody bothers you about it anymore.”

Q. Speak a little louder so these jurors can hear you.

A. I can’t speak, my throat is sore. He says, “Bring \$500.00, and going to be everything squashed up.” I said, “What you mean?” He says, “No case at all.” Well, I think myself I get him money, the \$500.00, and I pay Louie, I pay in Kaplan’s garage money.

710 Q. You paid Kaplan \$500.00?

A. Yes, sir.

Q. When did you pay Kaplan that \$500.00, the next day?

A. Next day, yes, sir.

The Witness: Exhibit 82 is a true and correct representation of the intersection of Douglas Boulevard and Kedzie avenue, so is Exhibit 83, it shows the delicatessen store where I stood when I saw these cars come to that intersection. At the meeting at Kaplan’s garage on Ogden and Kedzie in July of 1936 Eddie Farber, Louie Kaplan, Eddie Dewes, Adam Widzes and myself were there. We were joined by Ralph Boguch, Boguch come and said “Your place is raided.” Well, Louie said, “It is nothing, where you heard about it?” Well, he says, “The place is raided. It is gone already.” He said, “Pinch anybody?” He says “no.” In the month of August, 1936, I was in Louie Kaplan’s garage again, Eddie Farber, Louie Kaplan, Adam Widzes, Eddie Dewes and I were there. Well, start talking about this place is pinched, trouble now. Pay big money for protection.

Q. Who talked about the place being pinched?

A. Boguch, I tell Louie, I said, “His place is pinched. Trouble. Your protection means nothing.” And he said, “Don’t worry, keep quiet, always got chance to make dollars someplace else, another still.” I said, “No, you are in trouble. No, it is only trouble.” Well, he says, “It cost you \$500.00 more.” He says, “The case is no case at all.” I said, “Where I get \$500.00?” He said, “Well, you got to get \$500.00. Going five ways, \$500.00 apiece.” Well, I think myself trouble, pinched.

Q. Well, never mind what you thought. Just tell what was said, Victor?

A. Well, he said cost \$500.00, all right. And I got and bring \$500.00, and pay \$500.00 down.

711 Q. Who did you pay the \$500.00 to?

A. To Louie Kaplan.

Q. When did you pay the \$500.00 to Louie Kaplan?

A. In August.

Q. In August of 1936?

A. That is right.

Q. That was the day after you had this meeting at the garage?

A. Yes, sir, that is right.

Q. Where were you when you paid him the \$500.00?

A. Where I was?

Q. Where were you, in his garage?

A. In his garage.

Q. On Ogden Avenue?

A. Ogden Avenue and Kedzie.

Q. All right; what else was said at that time and place?

A. Well, he says, "Pay \$500.00. Forget about that case. No case at all." I said, "What do you mean? Because there will be trouble again."

The Witness: I know Frank Campbell, I don't know what position he holds.

Q. And was anything said there about Campbell?

A. Then start talking, \$500.00. Then \$500.00 I pay. And he says Campbell investigator in that place might pinch you. I said "I don't know nothing about it. Nobody bother me, nobody bother me so far. He said "Well, Campbell investigator all over." He says, "Yourself Louie Kaplan," he says, "It means nothing. That is the way he gets paid for it. He is working, his job, he gets paid for it." Well he says, after while, he says, what you call him, I don't know what you call, he followed up everything, he is investigator, he says, they bring to the building and forget about it. He said, out of his hands,
712 he got nothing to do after that.

The Witness: October 1936 Louie called me up again, he says, come over to the garage, I goes to Louie Kaplan's garage. Was Louie, Eddie Dewes, Slesur, and myself. Well, says, we got another chance to make a dollar, I said, "What kind chance?" He says, "Well, got another place to get another still." I says, "No, I can't go on still. Now, you got trouble. Got big trouble. Now, go another still?" He said, "Don't worry about trouble,

that trouble all go out, it is through, we had you pay money." I said, "I don't know, can I believe it?" I said, "It is trouble, it is trouble." He said, "Come down and sit down on the car, and we will go." I said, "Where will we go?" He said, "We go to Fox Lake."

Q. Did he mention any amount?

A. Yes, sir, some amount. I said, "No, I don't want go over." I said, "What you want to go there for?" He says, "We got another place." I said, "Another place", I says, "Cost money again, where I get money? I got no money now." Well, he says, "Place cost \$750.00 to go in, good place, still." I says, "I don't know, I got trouble, Louie." He said, "Don't worry about trouble. You make dollars again; you lose on this place and make on the other one." I says, "No." He says, "All right." I says, "Well, I believe I go home."

Q. Was anything said then at that time at that conversation of October 1936, that you remember?

A. No, didn't say nothing, just about another alcohol place in October.

Q. Is that all you remember about that conversation?

A. No, I remember more, but I didn't start right. Then he says \$750.00 cost that place. I said, "Why it cost \$750.00?" He says, "Well, it is another place. It is going to be protected place again." I said, "Protect, 713 you get pinched all over there same thing." He says, "No, it is going to be protected." He says, "I going to be protected." He says, "Will cost you \$350.00, pay week again." I said, "Who?" He says, "Some people, big people in the Federal Building." That is the way he tells me, "big people."

Q. Did he say anything about worry?

A. He says, "Don't worry anything about other case. Western Avenue case." He says, "We pay \$350.00, don't worry anything. If anybody gets pinched, no bonds, cost you nothing, that \$350.00, \$350.00 a week."

Q. He says what?

A. He says \$350.00 a week cost payment.

Q. He said the payment would be \$350.00 a week?

A. Yes, sir, he said, "If you get pinched—anybody gets pinched, cost you nothing, no bondsman, no nothing."

The Witness: I don't know exactly the day in October that conversation took place. It was Saturday, I know was Saturday. Then Saturday talked about it. He says

this, "It is \$350.00 is going to be, cost a week." I said, "Well, \$350.00 I don't believe you can pay." He said, "No, I make arrangements with other people and let you know. \$350.00 going to be paid on Saturday." Then on Monday, he says, on that day I could pay money. The following Sunday he says, "Make arrangements \$350.00 to pay to people." The following Sunday I goes over to the same delicatessen store I mentioned before, that is located at Kedzie and Douglas Boulevard, I go there 10:30 and went in delicatessen store. I was in delicatessen store, and I stay there, and I saw ~~come~~ black car come same direction, go from east to west, and Louie was same corner, on Douglas Boulevard and Kedzie, north-west corner, and I see there same car come, and same people, I mean Nort and Glasser, I mean Norton I. Kretske the defendant, and Daniel Glasser the defendant. Come past 10:30 and I see same car blow horn 714 again. The black car come and Kretske was driving, and Glasser sitting behind, past Kedzie Avenue, and stop, and Louie go in and go, then I didn't wait, I go home. A week later I had a meeting with Kaplan in his garage, he says, "Now everything all right, you make arrangements, and everything, and see we go place and everything, costs \$750.00 to join." Eddie Farber, Eddie Dewes, Louis Kaplan was there and I am, and Stanley Slesur was there, that was a week after the meeting I described at Douglas and Kedzie. I gave Kaplan \$750.00 at that time in cash, three days after Kaplan called me up, says come over to the garage—then Stanley Slesur and Eddie Dewes and Louie and I was there. I go there. Kaplan said, "Come sit down in the car, we will go." We all got in, Eddie Dewes car, and went to Fox Lake, Illinois. We stopped in a saloon run by Joe Cole. When I got in there was Joe Cole and his wife, and Louie Pregonzer, nobody else was there. Then Louie got there, and buy glass of beer, and talks to Joe Cole, and Louis and Pregonzer says, "How is everything?" Says everything is alright, place is done. He said he had rented a place at the stock yards. After the meeting we all came back to Chicago. They say rent place at Fox Lake for stock yard. Shortly after that Kaplan says everything is alright. Says, "Well we go to slaughter house and have factory in Spring Grove, Illinois. He says we go work, we leave Chicago, go up to Spring Grove, Illinois, we go right straight to the job there, supposed to be

sausage factory. All kinds of machines there, boilers and everything. When I went to Spring Grove Eddie Dewes and Slesur go there. Lincoln Rankin helped clean up everything, making for vats, and everything there. Ralph Boguch was there. Some other fellow, Joe, I don't know his second name. We worked about six weeks fix the place, place didn't go right. I was inside. Same thing. Lumber you know, they have vats, like put together. And cleaning the place. I didn't help erect the still there. I

don't know nothing about the still, just vats. I don't know who moved there, but somebody moved there.

I see still at Spring Grove, the still started to work about November 1936, it produced about 60 or 70—five gallon cans a day. Kaplan used to come to the place at night time to see. I would see him there. When he would come out Ralph was there, and Lincoln was there and I was there, and Eddie Dewes was there. I worked there exactly six weeks, not quite six weeks. I leave that place, and I going out. I go over to see Louie. I go to Chicago, to my home, the same day I arrive I met Louie, Louie did not come out to my place, I go to Louie's garage. I told him, Louie, I want to quit that work. I afraid. I afraid to stay there in that place. He says, "Why you afraid?" I said, "I want to get my money, Louie". I said, "because the place don't go right, and I don't want it." He said, "Don't worry about it. The place was all right. Then Louis Pregonzer and Eddie Dewes come over and says "they going out working now, if they work, fix you up." And I said, "I don't want to go work there. Why should I go work? We got trouble Western Avenue, again trouble. I don't want to work. Said All right, then. Then I don't work, I don't go inside then."

I had a conversation with Kaplan in December, 1936. He says, "Well, Campbell look for you." I said, "All right, well if they look for me, they look for you, too." He says, "Yes, they look for everybody, investigator." He says, "In case comes up, comes up, don't say nothing to anybody." I said, "I don't know if come up or nothing." Then December 24, 1936 police pick me up in the morning. I come out from my house, police pick me up on Roscoe—then after go with police, come Federal men, and I don't know who was, but says, "All right, come on." I never saw those men before, before they come there, after me. They picked me up from the police station,

and take me to new post-office. We stayed there till about 4:00 o'clock. From the new post-office we go to the court-house right here. Investigator Campbell 716 brought me over to this building. Nobody else was with us. He took me to the United States District Attorney's Office. He take me inside Mr. Glasser's office.

Q. Now, was that the same man, the man you saw in the United States District Attorney's office there that day—was that the same man you had seen on those three occasions at Kedzie Avenue and Douglas Boulevard?

A. That is right, the same man.

I did not have a conversation with Glasser at that time. I was just sitting on the side seat, and Campbell and Glasser talked to themselves. Campbell tells him I bring defendant here to put bond on him, \$5,000.00 and it was December 24th, was Christmas eve, and, well, talks to Glasser, and Glasser tells him, tells me, well, are you Mr. Raubunas, I says yes, well, he says, "I guess it be alright to let you go today, day before Christmas. Come over Monday, 10:00 o'clock." I left the building at that time. I did not appear before a commissioner or sign any bond at that time. He just told me to leave the building and come back the following Monday. I went to Louie Kaplan's garage, I took taxi. I told Kaplan I was picked up by Federal Investigator. He said "Who?" I said, "Campbell". And he says, "Just who picked you up, what you say?" I says, "Well, he questioned me and try to make me talk, and tell me to come over Monday, to his office, there." He says, "Well, don't go." Louis Kaplan says don't go. I said, "Why wouldn't I go? I go in Monday. If I don't go, I have big trouble. He tells me to come over, and give address and everything." He says, "Don't go." I said, "I go and tell everything, because I don't want to be in trouble. Get in trouble, and pay money, you get money." He says, "Don't go." I said, "all right, I go home again." Think I go over Federal Building. 24th. Then Monday morning I talked to my wife, she says—

717 Monday morning I come to Federal, and before I come I go to Louis Kaplan's garage, I says, to Kaplan, "I go over to the Federal Building. I want to squawk, I squawk everybody. I have trouble." Well, he says, "Then if you squawk it is your own funeral, you know we meet people in the Federal Building who take care of that." I said, "I afraid anybody in trouble."

He says, "Don't be afraid of nothing. If you go back it's your own funeral." I went home, I was afraid, I didn't go. I did not go back to the Federal Building at all, after that. I never went back to the Federal Building in response to it.

January 19, 1937, I was in Louie Kaplan's garage, Slesur and I and Louie drove to Fox Lake to Joe Cole's saloon. Joe Cole's wife was there. She says "You got trouble in the place. The place is raided," and Louie says, "No, no. No raided." She says, "You got trouble. It is raided." Louie says, "Sit down in the car and we will go over," and we go over, I don't know how many people there, about a half a block away in the road, by that factory, and we see lots of cars there already. Well, I said, "I won't go there." Louis says, "Place is raided, no, don't worry about it. The hell with it. Let them raid it."

Q. Louie said what?

The Witness: He said, "The hell with it; let them raid it," we go there, and turn around and come home back to Chicago to Louie's garage. Well, I said, "We got trouble in the place, it was raided, but they don't know who got pinched, nothing." Next day Louie says, "Well, two fellows got pinched there, Ralph Boguch and Lincoln Rankin." Kaplan said don't worry about it, no trouble, it is no trouble, it is nothing at all, that same place, same like Western Avenue. I said "No you got trouble again." I said, "You get money and pay him you got trouble again." He says, "Don't worry about

anything, fellows going to be bonded. I don't know 718 them fellows." I saw Kaplan again in March 1937 in his garage. I went there in response to a telephone call, and we went to 12th and Kedzie, a restaurant and tavern together, there was Eddie Dewes, Louie Kaplan, Stanley Slesur and myself and Joe Cole and Louie Pre-genzer came in, Slesur was not there, Kaplan said, "Got trouble again, and cost more money again. \$500.00, it is going to be squashed up, this case." After that conversation I go home and bring my \$500.00 Kaplan said, "Don't forget the \$500.00, and forget about that case. It is no case at all. I got people in the Federal Building taking care, let them have a headache now." "You don't have to have headache. You don't have to have trouble no more."

Q. He says what? Repeat that last.

A. He says you don't have no trouble. He says you have no trouble, no trouble on Western Avenue, no trouble, here he says, don't worry about it, says let the people worry in the Federal Building.

Q. He said let the people in the Federal Building worry about it?

A. Yes, sir.

The Witness: Kaplan said, "Forget about it, and go home." So then I go home. I see Kaplan afterward. I meet him at the gas station I mentioned before and in his garage. I always told him about trouble, and he says, "Don't worry about trouble, we have no trouble, Bob White, investigator, goes around, and he investigates and looks after everybody."

Q. He said Bob White would look after everybody?

A. Everybody.

The Witness: He told me that, between March and April 1937. He says Bob White is working, he go all over, he says, to find out everything. He says somebody squawk. He says Joe Cole and Louis Pregenzer squawk.

I saw Bob White in the court-room once, I know he 719 is an investigator for the Alcohol Tax Unit, and

Kaplan told me he was working on his case. Well, he says, he working on the case, he get paid, paid for. As soon as he finish his job he bring up to the building, he is going to be through. He is going to be through with his work.

In the early part of May, 1937, I seen in the paper advertisement gas station for sale in Lake Zurich, and I go with my car. I start going with my car, and I going west on Harlem Avenue, Harlem avenue, going north, Harlem avenue, I go to 22, I go on Manheim Road to 45. I was alone driving my own car on 22nd Street, then I goes from Manheim Road, I go north, to the Higgins Road. About a quarter of a mile west from Arlington Heights Road I passed by, I see Louie's car in Forest Preserve. It was a Ford I didn't stop. I go, I just see. I didn't slow down the speed of my car, I wasn't so speedy, I was going about 35 miles. I see standing behind the car,—the car was standing, Louie Kaplan and Eddie Farber and Dewes there. Across the street on the north side was the Forest Preserve, south side of the street was a green-house. I go straight to the gas station at Lake Zurich. I just saw Kaplan, Farber and Dewes standing there. Next day Eddie Farber calls me up, he says come

over to Louie's garage, I go to the garage, Eddie Farber and Louie Kaplan was there. Eddie Farber says, "You know about the place." Kaplan was there at the time. He said, "You know our place. You follow our place." I said, "What do you mean our place?" He says, "No you know the place." I said, "No I don't nothing about it." I didn't tell them I see them, in the woods. And if, I don't know if was a still there in that green-house. He said, "You know that place." I said "No." He said "We see you pass by that road with your car." I said "No, I don't see you." I just tell them that. Well they says, "You know we got place." I said "I don't know nothing about that place I go-
720 ing to see gas station that was for sale." No you know that place" he says, I said, "No." Was start argument. He says, "Will cost you \$600.00 to come in, and you got to go there, because you knew place, you follow, you come." Eddie Farber said. Kaplan was there. I said, "I don't know nothing about the place." He said, "You do." He said. I said, "I give \$600.00 for the place, and get pinched, you be in trouble," and I said, "I don't know nothing about it." I says, "What kind place you got?" He says, "I don't know? I don't know,——" I said, "I just passed by." He says, "Place cost \$3,000.00." I says, "Well—." He said, "Cost you \$600.00, and you go in on partners there." I said, "I don't know nothing about the place. I only see place, what kind of place, I don't know nothing about." He says, "You don't know nothing about it, we saw you pass." He said, "You give \$600.00, we show you place. Place is good, cost \$3,000.00,— \$600.00." I know Ed Farber at 5400 West Madison Street. The next day I got call from Eddie Farber again. Said meet me on Kedzie and Ogden Avenue, what they call Meisner Bar. Kaplan was there. I go on the street car there. And I go out and I see Farber on the corner, Eddie Farber. It was ten o'clock in the morning. He says, "Now, well are you ready to go?" Louie came over there. I says, "I am not ready yet, I don't know, I don't know nothing about that place." He says, "Well you pay money, we will show you place. I said, "all right."

About 11:30 I go home. I come back again. I got \$600.00, and I come back again, on the corner, and Louie takes car from corner, and picks us up and goes and takes out on Arlington,—or Albany, and Roosevelt Road, on that park, Douglas Park, I don't know what you call.

Then we stay there. He says, "You got that money?"
721 I said, "Yes, I got that money." Well, says, "Pay
the money." I pay \$600.00, and Louis takes that
money from me. I went to Arlington Heights with them
but not that day, he says we show place as soon as gets
dark. Well, he wouldn't show me place that night. And
I see car, I pass by Madison Street, I go to Eddie Far-
ber's place, I drives around. I go there with my car.
I go pass, so I see Louie and Farber were standing there,
and then I turn around on the block, and when I come
back, Louie Kaplan and Farber were gone. Then I goes
to Kaplan's garage. Then was Eddie Farber and Louie
there, and said, "We take you to Arlington Heights to
that greenhouse, and show you the place. We go to green-
house then, takes me this place, and was moved out. Was
things and pumps there, and place was small moonshine.
I said, "All right, you move place out." I said "You
take \$600.00, you are operators, you crooks." I said, "all
right, I watch you place some place. I follow,—" Eddie
Farber says, "Takes five years, you won't find this place
no more." I said, "All right, then I go home." I didn't
hear anything from Kaplan after that. About a month
or more after that Eddie Farber called me on the tele-
phone, it is on October 1937, I know that. I went to Eddie
Farber's place and had a conversation with him, two days
later I hear from Farber again and have conversation
with him. Then I goes home again. I get \$300.00, I go
to take to Farber, then we go to Arlington Heights, we
go to a gas station on route 62 on Arlington Heights
Road, then we go up to a farm then on route 53. It was
the Beisner farm, Eddie Dewes, Farber and myself went
there. I didn't talk nothing to Beisner. After that we
talked there, and he says that is the place going to be,
same still going to be moved from greenhouse, going to be
there. They moved it over night to the Beisner farm.
The next day we started working. Farber used to come
there once in a while. Eddie Dewes and I were work-
722 ing there, nobody else. We put that still up on the
Beisner farm. It was a small still. It operated and
made just first run alcohol, called moonshine. We didn't
know how to run that still. We were there about three
weeks. Then Eddie Farber came there, and he started
working. It didn't go, then we go to Chicago and bring
his nephew to work, then that still didn't work and Eddie
Farber says he knows some italian fellow got a still for

sale at 120th and Ashland Avenue, I went there with Adam Widzes, Eddie Dewes and I and Adam Moles, and Billie Bagdones. We bought a still there and Adam Widzes and Eddie Dewes moved it to the Beisner Farm. On November 18th, 1937, the still was raided, I was not there. On the next day I received a telephone call from Eddie Dewes, then I went to Eddie Farber's home. Eddie Farber says, "Let's go down-town, we will be in trouble." And Eddie Dewes, I and Farber went down-town to the Insurance Exchange Building, and went right in the tavern, right inside of the lobby. We sat down in a booth and Tony Horton the defendant here met us. We sat down and start to talk. Eddie Farber said there is a lot of trouble. I said what kind of trouble, he said still, and talk about the bonds. Three fellows were pinched there, four fellows were pinched there. We talk about bonds, we don't have no money on bonds. Tony said he would put up bonds if we pay money. We said ain't got no money, everybody start to talk about the case and he says, "How is the case? Maybe you need lawyer to fix case." Eddie Farber said that. Then I say to Tony "How about." He says, "Easy to fix." I says, "How much," he says \$1200.00".

Q. Who said that?

A. Tony Horton.

Q. The defendant Tony Horton?

723 A. Yes. He said "Have you got \$1200.00?" I say "No we ain't got no money." He says, "Maybe come next time and have money" then we go again next time, all three of us, maybe three or four days after that. Same place Insurance Exchange Building, same tavern. Tony Horton came, Eddie Dewes, and I am, and Eddie Farber. He said "Got money?" I said "No we ain't got no money." He said "Where is bond money." We all said to take care of us and we pay money for bonds. I pay, not that day. We come from work, we promise to pay next day for the bonds, he take us on our own bond, he trust us.

Q. He would let these two men out on bond?

A. Three men.

Q. And would trust you for the price?

A. For the price, that's right.

The Witness: The fellows came out and we go back. Adam Widzes came out and the farmer. They came out on bond. I pay Horton \$300.00, Adam Widzes pay \$100.00 That \$300.00 between us three, Eddie Farber, Eddie

Dewes and me, and they won't pay me back. Tony Horton said "Got that \$1200.00?" I says "No." He say "If you got no money, no business." That was all that was said at that meeting. When Tony left Eddie Farber and I, Eddie Dewes and Adam Widzes went to 7 S. Dearborn.

Q. Do you remember what floor you went to at 7 S Dearborn?

A. 1128.

Q. Room 1128, and who did you see there?

A. We see Mr. Kretske there.

Q. Norton I. Kretske, the defendant here?

A. Yes.

The Witness: Nobody else was in the office, we four and Norty Kretske. When we got in Norty Kretske said,

"Well boys, you are in trouble, and I say "yes we in 724 trouble." We said "Well we come over to the lawyer's office."

Q. By the way, was this Norty Kretske that you saw in Room 1128 at 7 S. Dearborn Street, the same Mr. Kretske that you saw at the Great Northern Hotel, and on those three occasions you mentioned this morning?

A. Absolutely.

Q. The same man?

A. Absolutely the same man.

Q. Tell what conversation took place at that time.

A. He says, "Boys, you in trouble. It will cost you money. I say, "How much?" He says, "Twelve hundred dollars." Eddie Farber says, "It must be cheaper because Tony wants four hundred dollars." He says, "No, that is the same price." We tell him we got no money that day, and then he says, "If you got no money, bring in money four ways. Twelve hundred dollars four ways is three hundred." Then we go home. We come back the next day. Eddie Farber, Eddie Dewes and I. We see Mr. Kretske. He said "Got money" I says "yes, I got my \$300.00." He said, "All right, pay your money and go home and sleep and forget about the case." I say, "No, maybe we need protection." He say, "No, you don't want to have no more trouble. With your three hundred dollars, forget about it and everything will be all right." We came home again and this farm and Adam Widzes, the other fellows was before the Commissioner. The next day we three went to Kretske's office again and "Well," he said, "forget about trouble." I say, "I am afraid for trouble," and he said "No." He said, "Do you know

Mr. Kaplan?" I say "Yes." He said, "If you know Kaplan, you know he is having no trouble at Spring Grove."

I say "No." He said, "Same thing here, you will no 725 have trouble" so I go home. He said there would be no trouble if the fellows go before the Commissioner. I says, "Who will get to be lawyer?" He says, "Go there," and he says, "You no need no lawyer." I say I can't go without lawyer in Federal Court. He said, "Somebody see them, my fellows come there and everything will be O.K." I told him, "No, without lawyer, no good." He said, "You don't need lawyer."

I recall the day the case came up before the Commissioner. The defendants were Adam Widzes—I forget the other fellows name—Frank Niess, Eddie Farber and Emil Beisner. That day before we went to the Commissioner's office we went to Kretske's office, he say "Everything be all right, you need no lawyer" I say, "I need lawyer." He say, "Red is there." I say "Who is Red?" He say, "You don't have to know." I was not at the Commissioner's office on that day.

In November 1937 I received a phone call from Tony Horton, the defendant. He called my home, in response to that I go to his home at 111 E. 47th Street, Chicago. When I arrived there there was a colored woman and Tony, he has the second apartment, I went up there. I go in and say, "Why you call me?" He said, "I need one hundred dollars." I say, "For what? I give you money." He said, "Kretske needed more money," and I say "I ain't got none." He say, "Can you make it tomorrow?" I say, "Yes, I make it tomorrow," and he said, "Meet me in the Insurance Exchange Building at 9:30." I bring him one hundred dollars, the next morning in the same tavern in the Insurance Exchange, he said, "Got money?" I said, "I got one hundred dollars, that is too much money. I pay Kretske \$300.00 and you one, and again money. I ain't got, but I give you one hundred dollars." He says, "Go home." I go home.

In January of 1938 I received a call from Norton Kretske, the defendant, he say, "Come over to my 726 office, it is important." It was 3:30 and I say "I don't know if I make it on street car. It is so crowded people going home from work." He says, "Try." And I goes there late to his office about 4:30. He says "You got trouble again," I says, "What kind of trouble?" He says, "Same trouble again, you need \$400.00." I said "That is

some case, I don't belong there, he says, "You get warrant and I will quash warrant for \$400.00." I said "Mr. Kretske, I done nothing about that case. Why should I pay you \$400.00? I ain't got it." I left, I go home. That was all the conversation. A few days later I retained a lawyer, Daniel Anderson. I pay \$25.00 for him.

In June of 1938 I get a telephone call at home from Kretske, on Sunday morning, he says, "Come over and meet me on 12th and Halsted." I go there at 9:30 and meet him in cigar store. Nobody else was there. I say, "Why you call me?" He says, "It is important, you got to raise two hundred dollars." I say, "For what?" He says, "Spring Grove come out, and I need two hundred dollars so nobody be indicted." I say, "I don't know who is indicted." He tells me Joe Cole, Louis Pregonzer, Lincoln Rankin and Stanley Slesur, those people indicted. Give me \$200.00," I say, "I ain't got it." He said, "Go and loan it from friends and give me the money so you will not have trouble." I say "I ain't got no money," and I go home.

In November 1938 the marshal came to my home, I was not home. I call Mr. Anderson, I tell him the marshal must have some kind of trouble. Mr. Anderson call up and say I was indicted and I surrender myself. I put up a real estate bond in that case and then I went to Kretske's office. I tell him I am in trouble. "Well," he says, "you in trouble." I say, "So much money goes now, how much?" He said, "Four or five hundred dollars." I said, "I ain't got no more money, I can't give you." He said,

"You got lawyer Anderson," and I said, "yes." 727 He said, "You go to your Anderson lawyer and see what he can do for you, Anderson. He is your lawyer." I tell him "Yes." That is all.

I was arrested on April 24, 1939 in connection with the Arlington Heights still. I went to Kretske, I said, "I am in trouble." He said, "What can I do, it cost you more money." I said "I ain't got money. I got lawyer." He says, "Go to Anderson what he can do for you." The Arlington Heights case came up in court on June 13, 1939, Martin Ward was the Assistant United States Attorney. After that I went to Kretske's office, one time I see Louis Kaplan there, Louis Pregonzer and Norty Kretske and a girl. When I go in Mr. Kretske locks me in the other room over there, Pregonzer and Kretske go to Kretske's room, I waited fifteen, twenty minutes, the girl said Kretske left. Kaplan was not there. I did not have any-

thing more to do with Kretske any time after that. I was convicted in the Arlington Heights case and sentenced three years. Mr. Ward was the District Attorney in charge at the time I was convicted. I am now serving that sentence, seven months, it will be Sunday.

Cross-Examination by Mr. Stewart.

I started to serve my sentence on July 13, 1939 in Leavenworth penitentiary. I pleaded not guilty in the Arlington Heights matter that I was convicted on. The first still that I started talking about here this morning was on Western Avenue, my partners in that still were Louis Kaplan, Adam Widzes and I, and two more fellows, I don't know who the other fellows were, because I don't see them. I don't know their names, I never saw them. The only reason I know there were two more was because Kaplan and Widzes told me there were two more partners. I don't know exactly how much that equipment cost to put up, I put up \$1,000.00. They didn't tell me how much the whole business would cost, I was working inside the still when it was up. I never asked anybody how much it cost to put in the equipment. Kaplan says \$1,000.00

728 apiece, everybody. That would make \$5,000.00. That is the first still I was ever interested in in my life, I used to buy and sell alcohol. Everybody was doing it, and I start. I started in 1928, I bought just very few gallons, because I have a grocery. I say few cans. I sold just saloons. People come over and take out gallon or two. I was buying from lots of people from all over. I forget people's names, sometimes I sell two cans a week, sometimes I sell three cans in a week, up to 1932. Kaplan was not in that business with me, neither was Widzes. None of the people I went into partnership on the still with. I heard lots of Kaplan in the paper but never had anything to do with him, never talked with him. I just knew him through newspaper one time, and through the people talking about him. He had never been in my saloon before. He didn't come in with anybody I knew. Adam Widzes introduced him to me, I had known Widzes since 1928, he was not in the alcohol business. I can't tell if he was in the alcohol business. He was an automobile mechanic, that was the only business he had as far as I know. After I put up the \$1,000.00 with Kaplan I went over and looked at the still a few times, I worked around there helping put up the

vats. After the still was operating turning out alcohol, I did not work over there. I stayed away from there. I tell Louis Kaplan I was afraid the place might be raided and they might get me. I told him I wouldn't stay around the stills making alcohol. I didn't stay there. I didn't go near it. The still operated about seven months, I saw Kaplan nearly every day at the garage. I used to go to his garage.

Q. Did Kaplan give you any money that he said came out of the profits from running the still?

A. No, that is why I asked for my \$1,000.00. He said there is no money.

Q. How long was the still running?

A. Seven months.

Q. And during all the seven months, Kaplan did not hand you any money for profits out of the business?

729 A. No.

The Witness: I learned the still was turning out about ninety cans a day. I don't know what the market price was or what it was selling for, I don't sell. They told me a can was bringing \$6.50 or \$7.00. I don't know how much it was costing to manufacture it. I ain't got idea. I had no experience with that. I had no idea how much it ought to bring in. I don't know if it ought to bring in more than a thousand a week. The reason I went after my thousand was they ought to get more than a thousand profit back the first week. I was cheated right from the beginning I was being cheated. I used to complain to Kaplan and say I was being cheated, he said they were not making money. I wanted part of those profits, I see no profit, I want my thousand dollars, he promised me that I would make a profit when I first put the money in, he promised me protection and everything, so I take a chance. They worked every day and nights, and I see no money. Louis says, "There is no money, I pay protection money." I don't know if they not only cheated me out of my thousand dollars, but out of the work I did there too. I wanted my thousand, and can't get it. The still runs to October, 1936 from November 1935. Then it starts going and work October and November and December, and I see no money there. I am afraid I get no profit and Louis always tells me it is protection. I work building that still before it was ready to operate. It took six weeks. About two weeks after it started to operate, I started to complain and wanted my thousand dollars back.

After two weeks I thought I ought to see some money out of it, and when Kaplan didn't give me any that made me a little mad. Kaplan paid from that business protection. He took money out of the business to pay protection, that is why I did not get a profit. As soon as we start he told me he was paying a sum by the week for protection. I put up \$1,000.00 and it started to work in October. He said that day he got to pay, and pay by pay, they charge us \$430 since that day. He charged that to the business. He says it don't pay no more 730 profit. As soon as the stuff come out, they take that away from it. He said \$30.00 to pay some policeman, and \$400 to Federal Building, big people. I did not ask him what policeman they were paying \$30.00 a week to.

Q. Did you ask that names of the big people in the Federal Building?

A. He used to mention names, Red and Kretske.

The Witness: He first told me it was Red and Kretske that he was paying \$400.00 a week to; after Christmas 1935. The still was going, I was working on it, then Kaplan told me that \$400.00 of this money he was paying to Red and Kretske, I don't believe him. I thought he was just lying so that he could keep the money, so then I thought I would watch him to see who he met. I never saw him meet any police officer. I didn't see him meet Kretske and Glasser before December. It was January or February that I hear him mention names, Glasser and Kretske. I go out into court, and find out if them people were in the court. I came right down in the Federal Building here, it was either February or March.

Q. Can't you fix the date any better?

A. No, I got to remember middle of March and February.

The Witness: It was in the year 1936 I would see all courts. I did that six or seven times, all in the same month. I forget what Judges I went in before—Judge Wilkerson, Judge Sullivan, Judge Woodward. I was all courts here, I used to come. I saw Mr. Glasser during the trial of a case like that we are here on, with a Jury in the box and a Judge on the bench. I sat back there where those people are sitting now. I heard somebody calling Glasser. I hear lawyers arguing, I hear that. I don't know the name of the first case that I saw Glasser in, where a Jury was in the box. It was not a still they were talking about, some different case. I was not interested

in the case, I was interested to see the people. I
731 don't know if there was a lawyer on the other side. I
don't know what he looked like, all I can tell you is
that I saw Mr. Glasser there. That was the first time I
saw Mr. Glasser in my life, I did not go up to talk to him.
I saw Kaplan after that. The Western Avenue still was
operating. I did not tell Kaplan that I went down to the
Federal Building and saw Glasser. I was about five or six
times in court. I see him pretty near every day. I come
9:00 o'clock, I used to walk. The next time I saw him
when I got through coming down to court to see him, was
in April 1936, I saw him in the machine when he passed by
Kedzie Boulevard, that is one of the three occasions I
told you about. That is the time Kaplan met the machine
and got in. It was on Sunday. All the time Sunday,
it was as in April or May, can't say no day. Too long, I
forget. My best recollection is the first time it was in
April, 10th and 15th, 1936. I am talking about 1936, our
still was operating. I live about five miles from Kedzie
and Douglas, it is not the neighborhood where I hang
around. I was in telephone at Ogden and Troy, gas station.
Kaplan call Sunday morning at 8:30. He said he
would meet those people on Douglas Boulevard, I park my
car and hear, and then go in Automobile. I did not have
an appointment with Kaplan that day, I just went there
to the gas station, that is not Kaplan's place of business.
His business is across the street. I went to the gas station
and Kaplan came over. I complained to him every
day that I would like to have my money, every time I
saw him, he would not tell me he would call those people
up and meet them. He did not tell me that. He used the
phone, because I was there. I was a foot and a half or
two feet from him when he phoned. I was alongside of
him, I don't know the exact number he called. I hear he
meet them on Douglas and Kedzie. I don't know what the
exchange was. It was not a dial phone it was the kind
where he had to tell the number, put nickel in. I forget
about exchange. He told somebody on the phone he was
going to meet them.

732 He had not told me before that he was going to
make this date. I was spying on him, it was Sunday
morning, he go with his car and turn Ogden to Kedzie,
and go north. I go Troy and go north. I follow his car.
He parked north of Douglas on Kedzie about fourth car
from corner, I think. I go around and go straight Kedzie

north, and in next block park on Douglas, block and a half east of Kedzie. I walk into the delicatessen store and look out through the window. I did not know those people in the store, I had never been in there before. I bought a cup of coffee and watched out the window. I could not see Kretske's car from where I was sitting. The next time I saw Glasser and Kretske meet Kaplan was next month, it was in May, Kaplan did not tell me on that day before he went over to have the meeting, that he was going to have it. He won't tell me he used to meet them. He used to meet them on Douglas and Kedzie. About a month went by from the time I saw them the first time to the time I saw them the first time to the time I saw them the second time. I did not go over on that corner during that month. I did not go and wait and watch for them at time that I didn't see them. The second time I saw the meeting was from a telephone call I heard Kaplan make. It was over the same phone, and I was a foot and a half away. I don't remember exchange number. I heard Kaplan say he would meet them at Kedzie and Douglas at 10:30. I followed Kaplan over. I went in the same delicatessen and watched them meet. The next time was in October. That first one was in April 5th and 10th of 1936. The second in May. Then I let June, July and August go by. I wasn't over at the delicatessen store at all. I saw Kaplan getting his car again in October 1936 on Sunday. Kaplan made that phone call on Saturday, all the meetings were on Sunday, but in October I go to delicatessen because I got conversation with Louis Kaplan in October on Saturday, he says he make arrangements with the people and pay for Spring Grove \$350.00, he said he meet them tomorrow and talk to the people and make arrangements to pay \$350.00. It is a good place or not, don't know. I think about it, and go there and I meet them.

733 Q. You just figured that was the corner and you would wait there?

A. Same street.

The Witness: I did not see Kaplan the day after I saw him get into the car with Kretske and Glasser. I saw him through the week after that pretty near every day. I did not tell him that I saw him meet them. I asked him for my money. All he told me was that he was paying protection, he say, "The stuff is cheap and can make no money." During that month I asked him for

my money nearly every day. Then I saw him in May, and the still was still running, turning out alcohol every day, six days a week, and I was getting no profit out of it. The still was knocked over in July, some time in July, I think. I saw Kaplan the next day after the still was raided, in his garage. The raid resulted in the loss of all the equipment. So we lost all that and lost my thousand dollars too. I complained to Kaplan that his protection was not much good. As a matter of fact I did not believe he was getting any protection. I thought he was just lying to keep from saying me my profit.

The next still I had anything to do with was Spring Grove. I was brought down here on Christmas eve by Mr. Campbell, December 24, 1936. The Western Avenue still was knocked over in July. In October we had already started the still in Spring Grove. Kaplan got \$750 from me for that. He says, "Better luck, better protection, this place. You make some dollars." We go there and then start it give trouble. The partners in the Spring Grove still that I put up that \$750 for, were Stanley Slesur, Louis Kaplan, Eddie Dewes and me. I don't know the rest of the people. Kaplan didn't tell me how many others there were. Widzes was not in that one. I helped them install the Spring Grove still. I put it up, put vats together. I worked out there about four or five weeks, and then got it operated. It did not operate long before the Government came out. I left the place, I don't want to stay inside. I afraid, I tell them people no good.

734 He said, "Them people 100%, I find out from Federal Building." But I don't go to the place and sometime the place is knocked off. The men talk and say they protect it from bottom up, but I think I lose good money. I tell him and he tell me, "You make dollars." I was afraid to go near the still after it was put up and started to operate. I was afraid I might get arrested. They did not give me any profit out of that still. The still was knocked over in January 1937. I saw Glasser and Kretske over at Douglas Boulevard the third time in October 1936. That was when I was just starting to build the still at Spring Grove. Louis made some kind of connection. I was spying on Louis to make sure he had some kind of connection. Unless I could see Louis talking to somebody I wasn't going in it. That still was knocked over and we lost all of our property again, and our money. The next still I was in he takes me on Arlington Heights, new green-

house. I was going to Lake Zurich to buy a gas station. Newspaper advertise gas station. I was going in an honest business, I was driving on the highway and saw a car in the forest preserve, not over twenty-five feet from the highway. It was an old Ford, dark like. The people got out and the car was standing, I recognized them. They were Louis Kaplan, Eddie Farber and Eddie Dewes, I had not followed them out, just passing by. It was just an accident. I did not expect to see them. Later he did not show me where the green-house was. He wants \$600.00. The green-house was right across the street from where they were standing. I didn't see Kaplan the next day. I saw Farber the next day. After I saw Farber then I see Kaplan. Eddie Farber say "What are you doing near us to our place?" I says, "I know nothing about any place." He say, "Where you go?" I say, "Lake Zurich. I show the newspaper. I show you gas station and barbecue stand in paper." When Kaplan asked me about the forest preserve I don't tell him nothing. Eddie Farber tell me "You follow us to our place." I tell him "I know nothing about the place." He say, "We see you, you pass by our place." I say, "Which place, I don't know, I see people." He asked me if I go and see them, but I would not tell them nothing that I see. He tells me "Where did you go with your car, you follow us into our place." I says, "I know nothing about your place." They wanted me to put up \$600.00 and I didn't want to, Eddie Farber, he say, "If you don't do it, you know our place." I say, "Which place?" He say, "That is a nice place, that green-house is nice place there." He told me that if I did not put my \$600.00 and they go in trouble, I would be in trouble too, and I thought I might just as well go in with them. Eddie Farber takes me to 12th and Halsted and I give Louis money. Louis takes money. I did not keep my money in a bank. I keep my money at home. Used to have it in University State Bank, and then crashed. I take it out. I keep all the moneys I am talking about paying, at home. I didn't have that money in the bank. That \$600.00 I gave to go in as a partner in the still that was to be in the green-house. After they got the money they moved the still. They say, "Hot spot." I tell them "You crooks, you get my money for nothing." Eddie Farber say Kaplan move, and Kaplan say Eddie Farber move. I said that Kaplan was a crook and was lying to me and

was cheating me, last time I tell them. The still that was moved out somewhere overnight out of the green-house was moved to Arlington Heights. In that still the partners were Eddie Farber, Eddie Dewes, Adam Wdizes, Bagdones and Moles. Kaplan was not a partner. Eddie Farber, he says, "I give better protection than Kaplan, you make money with me." Eddie Farber told me that Kaplan's protection was no good, he said, "You lose \$600.00. You go in with me and make money with me." That still operated just a little, Eddie Farber made very few cans, so I lost that \$600.00. That was the end I have no still. That was the one I was convicted in, that is the one on the Beisner farm. We took that still from Adam Moles and Bill Bagdones. They gave us a mechanic by the name of Niess. I was arrested by Mr. Campbell and brought over here on December 24, 1936, at that time the

Western avenue still had been knocked over, and I 736 had started on the Fox Lake still. Mr. Campbell arrested me on the Western avenue still. Campbell asked me if I was one of the partners, I won't tell him at that time nothing. I was afraid of Kaplan when I come over, what he wanted to say. I told them I had nothing to do with that still. I don't lie that time.

Q. Sure you lied to him. When was the first time you told anybody connected with the Government, that you were a partner in the Western Avenue still?

A. Sure, a thousand dollar takes me for partner.

Q. When was the first time you told anybody connected with the Government that you were a partner in the Western avenue still?

A. What you mean?

Q. Well, they know it now, don't they?

A. I knew that time I was a partner in 1936, December 25.

Q. You knew it, but the Government people didn't know. You did not tell the Government people that you were a partner in the Western avenue still when you were working there?

A. I won't tell them because I was afraid.

Q. When did you tell them that for the first time?

A. Next time I come over to Louis Kaplan's, 1936, December 24. I come to Kaplan and tell him, "I was picked up and questioned and got to come back Monday."

Q. That is about Kaplan you are talking?

A. About me I talk.

Q. But now, the Government people have your signed statement that you were a partner?

A. Since that day they have my statement.

Q. You have signed a statement?

A. When?

Q. You tell me about it. Have you not signed a statement?

A. I was just talking I would not tell that Government that day. They tell me I should go Monday back to tell them.

737 Q. You did not go back?

A. Louis Kaplan stopped me. He says if I do, it is my own funeral.

Q. You were convicted in the Federal Court and sentenced to three years; is that right?

A. That is right.

Q. Up to that time you had not made any confession that you were a partner in the Western avenue still?

A. Sure, I got to come to court again.

Q. Who did you tell that was connected with the Government before your trial, that you were a partner in the Western avenue still?

A. The investigator. I tell them which one was right.

Q. Who did you tell that to?

A. Investigator—I don't know.

Mr. Stewart: Mr. Bailey, will you stand up?

(Mr. Bailey arose.)

A. Mr. Bailey.

Q. That was after you were convicted and given three years?

A. Yes.

Q. How long after you were convicted and given three years, did you tell Mr. Bailey these things?

A. Well, I was nine days or something.

Q. Were you already down at Leavenworth?

A. No, I was in County Jail.

Q. Had you been to Leavenworth and come back again?

A. Yes.

Q. You did part of your time without telling them you were guilty?

A. Guilty in them cases?

Q. Yes.

A. No, because I be on trial. Then I tell them right everything. It is my wrong.

738 Q. So it was after you were convicted and were down in the penitentiary awhile and they brought you back?

A. I tell them about me, because I got to come back in them cases.

Q. You were afraid they might prosecute you on these other cases and give you a longer sentence—

A. I was afraid Louis Kaplan would rob me.

Q. You were afraid Louis Kaplan would tell lies about you?

A. I am afraid Louis Kaplan would tell lies to nobody.

Q. You were afraid Louis Kaplan would tell lies about you, weren't you?

A. I am not afraid.

Q. You are afraid now that the Government might give you more time on the other cases, aren't you?

A. I know I get them.

Q. Did you ever sign a statement for Mr. Bailey?

A. I sign, sure. I make my statement and I sign.

Q. Did you do that more than once?

A. Once.

Q. Just one statement?

A. Yes.

Mr. Stewart: May I have his statement?

Mr. McGreal: Yes.

(Document handed counsel.)

Mr. Stewart: Q. Now, the Government representatives have handed me a statement which shows at the top of it the date October 20, 1939. Do you see that? Is that your signature on there?

A. Yes.

Q. Did you sign that?

A. I guess.

Q. You signed one before that, didn't you?

A. What do you mean, before?

739 Q. Before you signed this one, you signed another one for them, another statement for them, didn't you?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Don't you know whether you signed your name for the Government? You see, there is your signature.

A. I sign.

Q. And there is Mr. Bailey's name?

A. Yes.

Q. Did you do that at another time?

Mr. Ward: Do you want it, Mr. Stewart?

Mr. Stewart: Yes, thank you.

Q. Now, we have these pictures here. Will you show the jury on this picture, by pointing, where that delicatessen store is?

A. Right here.

The Witness: That is on the corner of that building where the delicatessen store is. On Exhibit 83 and 82. The car stopped right here. I don't understand about streets. I know east goes to the west, Douglas Boulevard is a one way drive there. The car I saw stopped in front of the store, it was going from east to west, the store is on the north-east corner facing the Boulevard. The people I saw in the car never got out of the car, they just stopped and looked like that (indicating). They were sitting down in the car. I looked at them through the window. I have great big thick glasses on. I don't know the name of the glasses. I got them from a doctor. Doctor Die, 47th and Ashland.

Q. Without the glasses, can you see the gentlemen at the table?

A. No.

Q. You take the glasses. How many rows of people are back there?

740 A. Oh, lots of people.

Q. How many rows back there? Start from the beginning and tell me. Stand up, if you want to look?

A. One, two, three, four, five, six, in the middle.

Q. You think it is six. Could you identify somebody from here, over to those front seats?

A. Don't know nobody.

Q. Could you tell me from here?

A. Yes, I tell.

Q. Could you tell a man from a woman?

A. Yes, I tell.

Q. You could tell there was somebody sitting in the entire audience, I suppose?

A. Right in front, I tell them. Back there, no tell, but in the front. Anyway, it was not that far distance.

Q. But you were looking through a window, weren't you?

A. Just to the end of that desk.

The Court: How far?

A. That desk.

Mr. McGreal: Indicating—

Mr. Stewart: Oh, let the jury guess at it.

The Court: How far would that be?

Mr. Stewart: I am not good at that, Judge.

Mr. Ward: Let the record show the witness indicates the second table.

The Court: Q. How far were they away from you when you saw them?

A. Just width sidewalk.

The Court: The width of the sidewalk?

A. Yes.

741 The Witness: Mr. Campbell did not ask me nor did anyone else about Fox Lake, I surrender myself, I put bond. No Commissioner I was before. I was arrested three times before I was convicted and got that three years, the first time I was arrested in 1938, I can't say on what. I never was arrested on Western avenue, just picked up and questioned. I did not give any information, will not tell because I was afraid. The next time I was picked up was Fox Lake or Arlington Heights, don't know which is first. They never had me over in the new post-office. Right here I put bond. Nobody questioned me. I surrendered myself. In that case Beisner and Widzes and Niess were arrested. I was telling here this afternoon that I went up into Mr. Kretske's office about that case. I did not come over to a hearing before the Commissioner. I was not a defendant, I needed a lawyer because that farmer was pinched and they came over and tell us "You want to be in trouble too?" I just get that lawyer. I was just afraid they would put me in, that is all. At the time I was talking to Kretske there was no warrant out for me in that case. When I finally went to trial I hired Mr. Anderson, he got sick and sent somebody else. The case was continued a lot of times because he was sick. I paid him \$100.00 altogether. He did not tell me he fixed the case. I did not ask him to fix the case. When Mr. Campbell brought me down here for questioning on Christmas eve, he brought me here. He had me in the new post-office and questioned me there. I wouldn't give them any information about myself, I was afraid. Then he brought me over to see Mr. Glasser. I didn't tell Glasser I had seen him out there meeting Kaplan in 1936. I never told Kaplan that I saw him get in the car with these people.

In April 1936 the car that Glasser and Kretske were

in stopped right there where I was looking out the window, but Kaplan did not get in the automobile until that automobile traveled across the street, so that when the automobile stopped to get Kaplan, it was across Kedzie avenue.

742 Q. Now, will you tell this Jury and the Judge as near as you can remember, what Kaplan said on the phone in that oil station that morning? It was that morning you heard him when you were a foot and a half away from him. What did he say?

A. Somebody call him up or he call somebody, I hear Louis Kaplan say, "Douglas Boulevard and Kedzie" Then he hang up telephone and go.

Q. That is all he said?

A. That is all.

Q. There was no time mentioned?

A. No.

Q. No time mentioned?

A. He said Sunday morning.

Q. I mean in the conversation itself, Kaplan did not tell when he was going to meet them?

A. He just tell them Douglas and Kedzie.

Q. That is all you heard?

A. Yes.

Q. Now, you have told us all you heard?

A. Yes.

Q. That is right, is it?

A. Sure.

The Witness: I was sentenced to three years in the penitentiary in this building on July 18, 1939. I entered the penitentiary at Leavenworth on July 29, 1939, I think. Exhibit #84 is my signature on a statement I gave to the Federal agents after I was convicted on July 27, 1939. Mr. Devereux and Mr. Bailey were there and signed their names. When I signed this statement I didn't have my reading glasses so I give them statement and they read it to me and I sign. They read the statement to me. I was a prisoner at the county jail at that time. After I was brought out of the county jail I was taken to the Banker's Building. I wanted to tell them everything before I went.

743 Q. Seeing that you were convicted you might as well tell them everything, is that it?

A. I tell them right, too.

Q. You thought it would help you in serving your time?

A. I figure I come on both cases. Might be convicted for ten years.

Q. So you told them all?

A. Sure. I serve my time and tell them everything.

Q. That is why you made this statement on July 27th, isn't that right?

A. That is my statement.

Q. Up to that time you had not given any statement?

A. I tell people, if I have it, if you need me, I make full statement.

The Witness: I did not know at the time that I was in Kretske's office that he had left the District Attorney's office and was now a lawyer in practice, not know where his office is. Eddie Farber tells me where his office is. I went up there, that was the first time in my life I ever saw Kretske to talk to, but I had seen him before, riding around in an automobile, and all that, but the first time I saw him to talk to was when Eddie Farber took me up there in the Arlington Heights case. Don't know what day I went up there, don't know what month. This place was raided and after it was raided, it was two days there, I forget the month. My statement says November, 1937, I think that is about right. I first met Mr. Horton in the Insurance Exchange Building about the same time, about the same case. Before that I did not know Mr. Horton. When I was up in Kretske's office at 7 S. Dearborn, when I was in that trouble and those other people were there, I did not tell Kretske that I had seen him when he came over and picked up Kaplan a couple of times. I did not tell Kretske when I met him that I saw Kaplan come down and meet him in the Great Northern Hotel in March, 1936. I did not say anything about it.

Q. Now, I am going to read you this statement that you signed, because of the fact you cannot read,—with the Government's permission. Is that all right, Judge?

The Court: Yes.

Mr. Stewart: Q. Listen carefully, because I want to ask you questions about it. (Reading.)

“1900 Bankers Building
Chicago, Illinois.
July 27, 1939.

“I, Victor Raubunas, hereby make the following statement • • • There being no threats or promise made to me.”

Q. You didn't know anything about their titles? You

didn't know what Mr. Deavereux' job was with the Government, did you?

A. I know nothing about it. I think just to give my statement.

Q. They put that in the statement, didn't they?

A. They put it.

Q. That is something you did not know anything about?

A. Everything that is there, I knew was there.

Mr. Stewart (reading): "In November, 1937 . . . introduced me to a Negro, Tony Horton, who I understand is a professional bondsman in the Federal Building."

Q. That is what you told them?

A. Yes.

Q. That is true, is it not?

A. That is right.

Q. That is the first time you met Horton?

A. Yes, in Arlington Heights.

Q. And he was introduced to you?

745 A. Yes.

Mr. Stewart (reading): "Farber talked to Tony about bonds and that we were going to be mixed up in that case, too. Tony Horton told the three, it would cost \$1200 to get the case fixed up. We told him we did not have any \$1200. . . . Eddie Farber told us to go see Kretske."

Q. Eddie Farber told you to go to see Kretske?

A. That is right.

Mr. Stewart (reading): "We went to 7 South Dearborn street, Eddie Farber took myself and Eddie Dewes, where Eddie Farber introduced Eddie Dewes and myself to Kretske."

Q. Is that right?

A. That is right.

Q. You never had met Kretske before in your life, before you were introduced to Kretske, had you?

A. That was first time I was introduced to Kretske, but I saw him in March, 1936. This was 1937.

Mr. Stewart (reading): "Eddie Farber told Kretske that we were there because . . . Kretske said after I gave the \$300, I would not have to worry, the case would be fixed."

Q. So far, I read what you told the agents, is that right?

A. Yes, that's right.

Mr. Stewart (reading): "About a week after the second talk with Kretske, I got a telephone call from Tony Horton. He told me it was necessary that he get \$100 and give it to him in connection with the Arlington business. I went to Tony Horton's home and asked him why he wanted \$100.00. He said it was about the same case, that Kretske wanted more money and he wanted another \$100. * * * Tony Horton told me everything was fixed up."

Q. Is that right now, so far?

A. Yes.

Q. That is what you told the agents?

A. That is right.

746 Mr. Stewart (reading): "About November, 1938, I was arrested and found out I was indicted. Since in the same cases I had given Kretske \$300 and Tony \$100, I went back to see Kretske at 7 South Dearborn street, and told him I had been arrested and had paid him \$300. Kretske said he could not do anything unless he got \$400 more. I told Kretske I did not have \$400 and he said "You will go to jail then." I asked Kretske what he would do * * * I did hire an attorney by the name of Anderson and a lawyer represented in the trial before Judge Woodward on June 30, 1939."

Q. Is that correct?

A. Yes.

Q. That is what you told the agents?

A. Yes.

Mr. Stewart (reading): "Kretske called me on the telephone on two different occasions. Told me that he wanted to see me at his office. The first time he called me I went down to his office, although I don't remember what time during the period it was that he telephoned me. When I got to his office he told me that the Federal men had located the still. He told me that he knew that I was interested in the still. He told me something about the case. I don't remember at this time what it was. I told him that I knew nothing about that still at all. He told me that he would see that nothing would happen to me if I paid him \$400. I told him again that I did not have anything to do with that still. That I was not going to pay him any money." Is that correct?

A. That is right.

Q. What still was Kretske talking to you about then?

A. I don't know.

Q. You don't even know where it was located?

A. No, sir.

Q. You were not interested in any still at that time, is that right?

A. That is right.

747 Mr. Stewart (reading): "Some time later he telephoned me again to come down to his office and I did so. He told me again that the Federal tax men had seized the still; that he knew I was interested in the still. He would fix it for me for \$200 at that time. This was supposed to be a separate case entirely from the one that he wanted the \$400 in. I told him again I knew nothing about that still at all. I was not going to pay him \$200. After this second time I was called down to his office. He wanted to get \$200 from me to fix a case I didn't know anything about. I told him he was a crook. I didn't want anything to do with him and I walked out of his office." Is that right?

A. That \$200, he meant to fix the matter, would fix for \$200, he asked me for not being indicted, he fixed like.

Q. I will read this. The \$200 was mentioned two or three times in this paragraph. Supposing I read the paragraph back to you again?

A. That \$200 is 12th Street and Halsted Street. He wants \$200. I would never be indicted in Spring Grove, Illinois.

Q. There is nothing about Spring Grove in your statement.

A. That is Spring Grove. I might forget that. I don't know.

Q. After this second demand that he made for \$200, did you tell him he was a crook?

A. Yes. I told him. I told him. I walked out. That is all. I go to my lawyer.

Mr. Stewart (reading): "In May, 1939, I was indicted in connection with an alcohol still at Spring Grove, Illinois. I made a bond in that case on May 27th, 1939. After I made this bond I went up to Kretske's office at 7 South Dearborn Street. Told him that I had been indicted in connection with the Spring Grove, Illinois, still case. Kretske asked me if I had got the order. I told him I had. And he says, 'I can't do anything for you.' Then left his office."

748 Q. So after calling him a crook and walking out of his office you went back again?

A. I have to pay \$200.

Q. "After reading this typewritten statement which has been read to me by W. J. Devereux, the same is true. Signed Victor Raubunas.

"Subscribed and sworn to before me this 7th day of July, 1936, W. J. Devereux, Special Agent. Witness Thomas Bailey, Special Investigator." When you signed this over there at the Bankers' Building for these gentlemen, they not only had you sign it but they had you put your initials on each page, didn't they?

A. I put myself.

Q. You put your initials on each page, isn't that right?

A. That is right.

Q. You remember that is the statement that you signed for them, is that right?

A. Yes.

Q. That is the statement that they read to you, is that right?

A. That is right. I sign it.

Q. That is the statement you made up after you decided that you had gotten your three years. You were going to the Federal penitentiary you might as well tell them all you know. That is right, isn't it?

A. No.

Q. You did not tell them one word about meeting Kretske and Glasser and seeing Kaplan in the car, did you?

(No answer.)

Q. Not one word, did you?

(No answer.)

Q. There isn't one word in that statement.

Mr. McGreal: I object to that. You ought to give the witness a chance to answer. Let him answer.

The Court: Just a minute, one question at a time.

Mr. Stewart: There is not a word in that statement about spying on Kaplan and seeing him get in the car with Kretske and Glasser? Is there?

749 Mr. McGreal: The statement speaks for itself. I object to the question, Your Honor.

Mr. Stewart: Of course, you are entitled to make your objection. Will your Honor rule on the objection? I am asking him. That is proper.

The Court: The statement speaks for itself. Objection sustained. The statement speaks for itself. You read the statement.

Mr. Stewart: Q. Then after you went down to the penitentiary and did a little time down there they brought you back here again and asked you some more questions, didn't they?

A. That is right. I tell them this. I will finish this statement. ~~I~~ tell them the truth, investigator. If you know me, I come there. I have no time. If I have the time, I told them my full statement.

Q. You did not have any time? You were waiting in the jail to do three years. You didn't have any time to tell all about it, is that it? Is that the reason you didn't tell them?

Mr. McGreal: I object to that, your Honor. It is two or three questions.

The Court: What was your answer? Do you want to answer that?

A. Yes. I was from jail 19th of July.

Mr. Stewart: Pardon me. I would like to ask my question.

The Court: Q. What?

A. From July 19 I was sentenced; 1939 I was sentenced county jail. We were waiting up to July 27th. I write. I tell him—I want to tell him I make my statement because I got another case, because we have another case in Spring Grove. I got sentenced in Arlington Heights case. I make statement. I figure to myself, tell him everything I knew, even if I am sentenced. I tell him who the people belongs to it. Then he calls me up. I come there. Make this statement. I tell the investigator, all right now,

I got no time to make it. I go back to the jail. If
750 you need me, you want me, I come make my full statement. Then he calls me from Leavenworth to make a statement. Then he calls me up another time. Then I make my statement.

Q. Then, after you have been in the penitentiary for a while and did some time down in Leavenworth, they brought you back here?

A. Another case, Spring Grove case.

Q. You were back here in the county jail again, weren't you?

A. Yes, another case, before Judge Wilkerson.

Q. All I want to know, were you back here in the County Jail, were you here?

A. Yes. I was here before Judge Wilkerson.

Q. That is all I ask.

A. Yes.

Q. Then, where did they take you when they questioned you some more? They didn't do that questioning out there in the county jail, did they?

A. No.

Q. Where did they question you?

A. They can bring me here. I tell them everything. I make a full statement.

Q. How many times did they bring you over here? You mean in this building, the Federal Building?

A. Yes.

Q. The building we are in now?

A. Yes.

Q. When you came back—

A. The marshal's jail.

Q. I beg your pardon?

A. In the marshal's office.

Q. In the marshal's office?

A. Yes.

Q. In the lock-up down there?

A. Yes.

751 Q. How many times did they question you down there?

A. Oh, I don't remember how many times.

Q. Well, give us some idea.

A. I don't know. There was three or four, five times. I don't remember. I don't know.

Q. And in between the times they questioned you were you taken back there to the county jail?

A. In the evening we go.

Q. And you slept there in the county jail each night?

A. That is right.

Q. Then, they bring you over here each day and question you?

A. Yes.

Q. How long did that go on?

A. Well, I tell you, I don't know exactly.

Q. No, how long did that go on, those trips back and forth from the jail to the lock-up here?

A. Well, it was about for two weeks, something like that.

Q. A few weeks?

A. Yes.

Q. Now, did you learn from the questions that Mr. Bailey and Mr. Devereux were asking you, did you learn

that they were interested in prosecuting Mr. Glasser and Mr. Kretske?

A. No, I just took my statement, I make statement what I know. That is all.

Q. When you went back from the times that these gentlemen were questioning you into the lock-up there were other prisoners there, weren't there?

A. Nobody was there.

Q. When you went in the county jail there were other prisoners there, weren't there?

A. Sure.

Q. That is right?

A. Yes.

752 Q. Did you say to those prisoners after you were taken back that you knew that they wanted to get something on Glasser, that you were going to help them?

A. No, sir. I won't talk nothing to prisoner. I am seven months if I talk to one man there at all at the county jail, if I talk. I am here for four weeks, I won't talk to nobody.

Q. You didn't say anything in the presence of any prisoner?

A. No prisoner.

Q. Concerning the question that was carried on over here?

A. I got no friends. I go to Leavenworth. Man is thirty-six years over there. In thirty-six years he tell me, he says, "You don't have no friends here." That is all. "If you talk to nobody, be all right." I do that. I don't talk to nobody. "You will be all right." I do my work. I sleep. No, I talk in county jail to nobody.

Q. If you please, wait until I ask you a question. One time during your trouble when you were getting into trouble, one trouble after another, you told somebody that you would go and tell them everything. You would squawk.

A. Sure I tell.

Q. Who did you tell that to?

A. I tell to Louis Kaplan.

Q. You were mad at him?

A. No, I don't mad. I tell him make me from booze I lose money enough. I am through. About me going in the booze, all right, I say, I was in so many times, we go all together, figure.

Q. When did you tell Louis that you were going to squawk on him?

A. I told him that December 24th, 1935 and '36. I was picked up the 24th of December. And he take me, Mr. Campbell, he questioned me.

Q. I want to know what year that was?

A. '36, December 24, 1936.

753 Q. Well, you were in other business with him about Stills after that, weren't you?

A. Yes.

Q. And you were out in the Kaplan garage in March, 1937, weren't you?

A. Yes.

Q. And you gave him \$500?

A. Yes.

Q. And the man took it that you have already threatened with telling on him?

A. That is from the Spring Grove case.

Q. Now, can you explain to this Court the jury how it was that Kaplan would hold out the money to pay you boys, to take care of all the protection and then as soon as somebody would get arrested he would ask you for money again?

A. After if you arrested get money again for fix. That is our argument. He promised to pay, to pay money protection here, cost your case. If any trouble you give us money again.

Q. Didn't that fix include taking care of the case?

A. That is protection, that is the way he promised.

Q. He included?

A. He said protect, about the money, protect about the case. That is the way it was, protect about the case. I figure all the time in my trouble, I get into trouble.

Q. In your first still, that you had a partnership with Kaplan, he told you he was paying \$430 a week and \$30 of it was for the police?

A. Yes.

Q. You knew enough to know that the revenue agents of the alcohol tax, the Federal men, they are around looking for stills too, aren't they?

A. He tells this way—

754 Q. You know that, don't you?

A. Sure I know that.

Q. And did Kaplan tell you that part of this money was to pay the Federal agent?

A. No, he said Federal building, big people, that is all he told.

Q. He never told you that he was keeping some of the money to pay agents, did he?

A. No.

Q. You knew that he couldn't run his still with protection without having the help of the agents, didn't you?

A. That is all he told me. He told me in the Federal Building, big people, that is all.

Q. When you were driving by the Spring Grove, after it had been raided, and you saw a lot of automobiles there—

A. Yes.

Q. (Continuing.) —you didn't see Mr. Glasser's automobile there, did you?

A. No.

Q. Nor Mr. Glasser?

A. Was lots of automobiles there.

Q. You didn't know whose automobiles they were, did you?

A. No.

The Witness: Joe Cole's wife told me that place was raided. Louis and I, not go near. Louis want to go in, he says, "Hell with them. I go in. I don't afraid." He did not go in, he want to go. I don't know whether he bluff or not. I don't know if he was just pretending to me he wasn't afraid of any agents, I can't say.

When I was spying out there around that delicatessen store, I didn't take down the license number. I didn't look at that. I didn't have any idea what kind of licenses they were.

The Court: Q. Will you just take a look at that 755 clock and tell us what time it is? You see that clock?

A. It is fifteen, fourteen minutes after four.

Q. Fourteen minutes after four?

A. Yes.

Q. That clock is about 25 feet from where you are sitting?

A. I don't know exactly, I guess.

The Witness: I was never interested in any other still except the ones that I have been telling this court and jury about. Those are all the stills. I was never interested in any other kind of illegal alcohol business, except that peddling I did and in these stills. I heard people talk about me all over, a lot of people talk, sure it is me, that is all. It is not a fact that I had Tony Horton make some bonds for me up in Milwaukee, I did not meet Tony

Horton or talk with him in Milwaukee at all. I didn't pay no money for the bonds for people up there that were arrested. I had no interest in any kind of a law violation in Milwaukee. I didn't pay Tony Horton money for any bonds. I paid for that bond for Arlington Heights violation for Farber and I and Adam Widzes. I paid \$400. to Tony.

Q. Is that all the money you paid him?

A. \$400.00, that is all.

Q. Is that all the money you paid him?

A. And \$100.00.

Q. That was the balance of that?

A. Yes, no, not that. He call up special on the south side, on that case, about \$300. and make one hundred for Kretske.

Q. The bond money you gave him, that \$400. that is the only bond money you gave him in your life?

A. That is all.

The Witness: Those were not the only bonds I was ever interested in in my life. Before I went to trial, when

I was getting ready to go to trial, before Judge Wil-756 kerson, the defendants and the lawyers all sat down and talked the case over. Kretske was there too. I didn't say a word at that time. I didn't say nothing to nobody, just to my lawyer I talk; that is all. We say that is all. I never opened one word to nobody.

I saw Kaplan meet Kretske in the Great Northern Hotel in March of 1936, I can't give any date. It must have been the end of March. No weeks or days I can't say. It is a long time ago. I forget it. I was not interested in helping Boguch get a bond. I did not pay any money concerning that case. I did not talk to Horton about the Boguch bond. I was born in Lithuania, I took out both my citizenship papers, in the Federal Building, May 3, 1922. I have been in Chicago before I went on the stand here over in the county jail now, I don't know what day, I guess four weeks now.

Q. Ever since they brought you here and got that statement, that statement from you?

A. No. On another case. I don't know, from Milan, Michigan.

(Whereupon an adjournment was taken until Monday, February 19, 1940.)

Cross-Examination by Mr. Stewart (Resumed).

I was seventeen years old when I came to this country, I came to Ohio. I came to Chicago in 1910. While I was in Ohio, I worked on the railroad and in the mines. I just got wages. And when I was here I worked at the Chicago Junction Railroad Company as a laborer from 1910 to 1913, I just got wages. In 1913 I go back to Europe, I come 1914 back. While I was in Europe, I did not earn any money, I just go to see my mother there and I come here. I come back to Chicago Junction Railroad Company. I work there six months, then I quit, I go to brewery, South Side Brewery, bottle department, I worked on a team with a wagon, for wages and commission, from 1914 to 1918. Then I bought a soft drink parlor at 4523 South Wood Street, I was in that business about a year. I bought a soft drink parlor with money I had saved out of my wages. I didn't own the property, I just paid rent. After a year I sold this because somebody buy building, and he buy the building, then he pay me off, I have empty cases, have to pay \$300. They wanted to get the building, and wanted me to move, and gave me \$300. Then I bought a soft drink parlor at 4646 South Western Avenue, I was there about eight months, paying rent just making a living. Then I sell out and go work Eckhart Company selling flowers. When I sold out the soft drink business on Western avenue, I don't remember how much I got, I got \$700. I went to work for wages again for about three months, then I was in the restaurant business, from 1921 to 1923, and I was paying rent, just making a living. Then I sold the restaurant and went in the smoked sausage business. When I sold the restaurant, I did not sell it at a profit. I just about broke even, then I go and open up lunch room 4301 South Lincoln, I was there about six months in 1924. I was paying rent. Just making a living, and then I moved to 4350 Rockwell in a flat. For about six months or so I didn't do anything. After left that place, then I go to 4404 Rockwell, I get cottage there. I put \$500. down, I don't remember how much, \$2500.00, then I pay so much a month, I open up store downstairs, that was a grocery store, I ran it up to 1932, then in 1935 I go in the tavern business. In 1932 I go sell beer, go back, in 1933, I go to Schlitz, selling beer, on salary, I make little money there, and in grocery store.

I met Kaplan and Widzes about September 10, 1935, at that time I was operating a tavern, I did not own the building, I was paying rent. The fixtures were mine, I owned them. I had a mortgage on them. I was just making a living, paying my bills. At that time they wanted me to put up a thousand dollars in connection with the still business that I was going into. I did not have the thousand dollars in cash, I sold my place. When they 758 were talking to me, I have some money. I have altogether \$7000.00. Before I sold the tavern I was saving it. I was saving that money all the time. Before I sold the tavern I had \$6000.00. I sold my tavern for \$1200.00, so with my tavern and everything I had \$6000.00. I got grocery store, I selling business, and my wife and I work day and night in the grocery store. I have children, a girl seventeen and a half, a boy fourteen and a half, they are not bringing in any income, they go to school yet. At the time I sold my tavern I did not have any stocks or bonds. I did not have a bank account, life insurance, real estate or any kind of income at all. At the time I sold the tavern, I had a bungalow, the one I put \$500. down on, I do not own that now, the mortgage people took it in 1939. At the time I sold my tavern I owned the home, my wife and I were living in at 6557 South Talman. I trade that cottage for that bungalow, I have a bungalow, a brick bungalow. I don't know what that bungalow is worth, it is supposed to be worth in 1933, so I trade, and mine was, I don't know how much, \$7,000.00 it was. I do not still own that, I sold out, I can't pay up \$5,000.00 mortgage. When Kaplan and Widzes came to my tavern to get me to put up the thousand dollars I told them I couldn't go on, and I scared to go on, and if I sell tavern—I think myself, if I going. Since I sold my tavern I worked for wages for the South Side Brewery a little bit, the Schlitz Brewery. I didn't work there long, I can't make it, costs lots of money, to go around selling beer. I worked at the South Side three months, Schlitz about two months, that is all the places I worked for, since I sold my tavern. I didn't have any other business since I sold my tavern. I have had no income from any source since I sold my tavern. I know the amount of money that I told this court and jury last Friday that I have been paying out since I sold my tavern.

Q. You listen while I read them to you, and tell me whether or not I have them right, because that will save time.

759 1935, September 20, \$1,000.00 to Kaplan to go into the Western Avenue place; that is right, isn't it?

A. Right.

Q. In August, 1936, \$500.00 paid to Kaplan to squash up the case in re Western Avenue?

A. That is right.

Q. In 1936 October, \$750.00 to Kaplan to go into the Spring Grove still?

A. That is right.

Q. 1937, March, \$500.00 to Kaplan in tavern, 12th and Kedzie, that was for the raid of the Spring Grove, that is right?

A. That is right.

Q. 1937, May, \$600.00 paid to Kaplan at the Neisner Bar, for the Arlington Heights place, where they moved it out, and you called them crooks, that is right, isn't it?

A. Yes, sir.

Q. Now, that totals \$3350.00. Then in 1937, October, \$300.00 to Farber on the Beiser matter, and \$300.00 to Horton for bond?

A. That is right.

Q. \$300.00 to Kretske?

A. That is right.

Q. And \$100.00 to Horton?

A. That is right.

Q. And \$100.00 to Anderson?

A. That is right.

Q. That is \$4450.00. Now, have I mentioned all the money that you paid out?

A. I paid \$1,000.00, I paid \$500.00, I paid \$750.00, I paid \$500.00, I paid \$600.00. I paid \$300.00 and \$300.00 for the Farber, and I paid \$600.00 on that greenhouse, to them. I paid \$300.00 to Kretske, \$100.00 to attorney, and \$300.00 to attorney for bond.

760 Q. Well, you have just about named them over again, you have memorized them, haven't you, you have committed them to memory, haven't you?

A. Yes, sir.

Q. That is right, isn't that?

A. Sure.

The Witness: I remember going down to the Great Northern Hotel with Kaplan. Kaplan asked me to stand by the door while he went over and spoke to Kretske and moved off with Kretske down to the basement. That was

in March 1936. Before that time Kaplan told me in January or February he mentioned Glasser and Kretske, he used to mention the names. I went down to court in February and March to get a look at Mr. Glasser and Mr. Kretske trying cases. Kaplan took me down so I could watch and see who he met because I was complaining and telling him I didn't believe him when he said he was paying out this money for protection. He did not bring me down so he could show me the man, he just said he coming down-town, that is all he said. He told me to stand in the door-way, where I was in a position so I could see. After Kaplan talked to Kretske, he came and joined me again, and I said "Who is this man?" and Kaplan said "Big man" then I said "That is Kretske." He wouldn't tell me who he was, he laughed, he just laughed. I mean he just laughed.

Q. Well, he has been telling you he was seeing Kretske all the time?

A. No, he didn't tell me to say just names, he used, he mentioned this, big people.

The Witness: I don't know when he was laughing if he was concealing something from me, I tell him Kretske first, because I see in court. This place out at the delicatessen store I was talking about, and the Judge 761 asked me how far the car was away from where I was standing, looking out of the window, it was over the sidewalk, that is all I remember. I was trying to convey to the Judge and Jury it was just a short distance. It was as far as back to the desk over there (indicating). I was in the window and was looking through the window and over the sidewalk to about where you are, I can't tell for true.

(Mr. Balaban and Mr. Stewart measuring distance.)

Mr. Stewart: Q. Is that your estimate of distance, it is 18 feet and 4 inches.

A. Something like that. I can't tell, I know by the sidewalk.

Mr. Stewart: You were out there three times, you told us, and always looking in the same direction, from the same sidewalk, is that right?

A. Yes, sir.

Q. It was always nice and bright, and you could see well?

A. Sure, I see.

Q. Now, as a matter of fact, that sidewalk is much wider than that. I will show you some pictures that we have had taken. (Counsel presents pictures to opposing counsel.)

The Witness: When I worked at the South Side Brewing Company I worked under my own name. I never changed my name nowhere. My wife and children now live at 5916 South Artesian.

Q. What is the phone number?

A. Republic 40— I don't know now.

Q. You don't know?

A. Never was telephone number when I lived there.

Q. I am testing his memory.

The Court: You may.

Mr. Stewart: He is remembering these things he has committed to memory. I am talking about some other things—

The Witness: If I think I remember, I call up.

Q. What is the number that Kretske called when 762 he called you up at home?

A. It was Republic—Hemlock, well, I forget, Hemlock 95—Oh, I forget.

Q. When I ask you questions that are a little different that are in your statement you have trouble remembering them.

A. No, I ain't got any trouble remembering, but I got this on my mind all the time, that is long time.

(Documents marked Exhibit 85 to 91, inclusive.)

Q. I will ask you to look at these pictures now, I am showing you. I am showing you Exhibit 91. Does that look like a picture of the delicatessen store you were in?

A. This picture, you know, it is pretty hard—I don't understand about the picture.

Q. Well you can look at it and tell us whether it looks like the store you are talking about. You looked at Mr. Ward's pictures, and said they were all right, didn't you?

A. Well, different than these.

Q. Different than that?

A. Just the direction, that is it.

Q. Well, does that look like the store you are talking about?

A. Look to me like.

Q. You will have to talk a little louder, so that they can hear you. Well, now, I will show you Exhibit #90,

that is from the inside looking out. Does that look like it, you were standing inside?

A. Yes, sir.

The Court: Speak up so they can hear you.

A. Yes, sir, that is inside.

Q. That is the picture where you are standing on the inside looking out?

A. Yes, sir.

Mr. Stewart: Q. Now don't you know the distance from the curb line out to that automobile at the curb is 50 feet?

763 A. I know—

Q. You say it is not?

A. Yes.

Q. The distance from the curb line along the edge of the store, I mean, along the edge of the store there out to the curb is 50 feet?

A. That is right on the corner, one window here, and one to the border, right here, window.

Q. Now how wide is it to that curb line?

A. That is what I don't know, I didn't measure.

Q. You estimated it here at 18 feet.

A. I know it is to about that desk.

Q. As a matter of fact, it is fifty feet, don't you know that, the width of the sidewalk, that is, the width of the sidewalk out there?

Mr. Stewart: By measurement we will show that, your Honor.

Q. Will you tell me how far 50 feet is back there?

A. I don't know.

Q. Give me your idea, I would like to get your idea of the distance; how far do you think is 50 feet?

A. 50 can be up to the people, people seated.

Q. On the inside, right there (indicating)?

A. On the first, over the fence.

Mr. Stewart: I will walk back there.

A. 50 feet.

Q. That is 50 feet in your judgment?

A. Yes, sir.

Mr. Stewart: We had better measure it.

(Mr. Glasser and Mr. Balaban measure distance.)

Mr. Stewart: What is the measurement, Mr. Glasser?

Mr. Glasser: 50 feet.

Mr. Stewart: Do you want to look, Mr. McGreal? —Alright, go and look. What row were you in?

764 Mr. McGreal: 50 feet to the third row of benches back there.

Mr. Stewart: Q. Now you were wrong in the judgment of the distance.

A. Never. Never that far.

Q. It is not that far?

A. Yes, sir.

Q. This tape measure is wrong, is that it?

A. Never that far, never from that entrance to that Boulevard, no.

Q. Then you don't have a very good memory of how far?

A. I don't know, it is far as from me up to that desk there. The sidewalk not wide.

The Court: When you were in that store that day, you were looking out the window at the car, what direction were you looking?

A. Direction south.

Q. And on to what street?

A. When I looking Kedzie, that is south.

Q. Kedzie Street?

A. No, that delicatessen store on Kedzie and boulevard.

Q. It is on Kedzie and what?

A. On Douglas boulevard.

Q. Douglas Boulevard. And as you looked out the other window—

A. That is south, yes.

Q. You looked out to the south, and looked out on to Kedzie Avenue?

A. On to the boulevard.

Q. On to the boulevard?

A. Yes, sir.

The Court: All right.

Mr. Stewart: Q. And when you saw Mr. Kaplan get in the car, you had to look cater-corner, across the other corner?

765 A. Same windows—two windows, corner windows, same windows, you can see everything, and the door.

Q. The same window, then you looked diagonally across the street?

A. On doors, right on the corner.

Q. Right through the door?

A. I stay right there.

Q. Well, I will show you a picture taken right through

the door, this is Number 91. That is your view right through the door, isn't it?

A. No, this is door on angle there. I stayed in the front door, and I faced to the street, see boulevard, go west, that corner you see easy north-west corner.

Q. Well, the picture I am showing you has a news-stand right in your way if you try to look in the direction you looked. Was that news stand there when you were there?

A. I was see everything. See either west and north corner, and south.

Q. Was the news stand there when you were there?

A. No.

Q. The news stand was not there, is that it?

A. The news stand, what do you mean?

Q. Don't you know what I mean when I say news stand? Where the news boys sell papers.

A. Yes, sir. There on the corner.

Q. Was the news stand there when you were making this observation?

A. Yes, sir, box stay there.

Q. The box was there?

A. Yes.

Q. And did you try to look, the way you said you 766 looked, the box would be right in your way?

A. No, that box is right, I can see through.

Q. Isn't the box a high box where the new boy has a shed there for his papers?

A. No. Box stays little north of the boulevard.

Q. Was that a kind of box that is in this picture, Number 91?

A. Box is low, I remember box sits there, and I know I see through top.

Q. Was it this kind of box that you see in this picture, Exhibit 91?

A. I don't know about the picture.

Q. You don't trust our pictures, do you?

A. I trust, but I don't know how I tell 'em.

Q. You tell us how the news stand looked in 1936.

A. News box, just like paper box stays on the stand, that is all.

Q. With the top on?

A. Yes, sir.

Q. I show you here picture 87, for your information, that was taken from where you said you were standing,

that picture is taken right on out from the curb so that the window is not obstructing it. Is that the kind of view you got of the car as it stopped there?

A. Right on the side stop I see right here.

Q. Well, here is the store here (indicating).

A. I don't know which one east, which one east and which one west, I don't know.

Q. Well, can't you figure it out, you looked at the picture there, there is the church across the street?

A. There is across the street, church. It is two-way drive there, Douglas Boulevard.

767 Q. All right. Now, does that look like the view you got when you looked out and saw that car stop?

A. No, that car was closer, here to there. (Indicating.)

Q. And the car I show you now, on Exhibit 87, you couldn't distinguish anybody in that car, could you? You can't recognize anybody in that car, can you?

A. No recognize, yes.

Q. And on this picture, can you recognize anybody in that car?

A. No, this is on a picture—

Mr. McGreal: I object to that question, if he could recognize anybody in that car, Your Honor.

The Witness: A. No.

Mr. Stewart: He says, no, he can't.

Mr. Ward: If the man saw a stranger he couldn't recognize him.

The Court: Objection sustained.

Mr. Stewart: We will show, when our time comes, that that is Mr. Glasser and Mr. Kretske in that car.

The Witness: In October 1936, Kaplan told me there wouldn't be any trouble, and there wouldn't be any bonds, or anything, that we were paying protection on the Spring Grove still, and that is the time I put in \$750.00. Kaplan says if anybody gets pinched in the place you go out on bond, costs no money to nobody. \$750.00 he is going to pay protection. I can't talk louder, I got a bad cold in my mouth. Kaplan says he made arrangements, \$350.00 paid to the Federal Building, big people, and he says in case trouble any place it ain't cost any bond or anything. I said "No?" And I said "And we are in trouble now on Western avenue place. We get in trouble here, you bet." He says, "Don't worry, no trouble, let them have a headache, them people in Federal Building, not you." That conversation was in October 1936. As a mat-

ter of fact, I did pay for bond when Beisner was arrested.

768 Q. And I will read you a list from the record of the bonds that you have been involved in and helped pay for, and knew about them, and you tell me if it is right. 62438 bond, \$2500.00, filed for Slesur in indictment Number 30992.

Mr. McGreal: I object to the form of Mr. Stewart's question. If he was involved in any bond he ought to ask this witness on cross-examination, instead of testifying himself, and asking the witness whether true or false.

The Court: I think the question ought to be confined to what bonds this witness obtained for himself, no one else.

Mr. Stewart: Your Honor, I wish to show, if I may be permitted, there was no truth in that evidence. We have a long list of bonds made by those people, the whole outfit of them, and he was participating in it and knew about it.

The Court: I think you had better confine your examination to this witness, about bonds that were used to liberate him.

Mr. Stewart: That is not the understanding of his guarantee, if I understand; may I ask the witness a question about that?

The Court: Yes, sir.

Mr. Stewart: Q. Mr. Kaplan told you he was going to pay \$350.00 each week, was it, out of the business?

A. That is right.

Q. That was so he could give it to some big Federal men?

A. That is right.

Q. And that was so that these fellows that worked around the still and tended to the still, if any of them got arrested you wouldn't have to pay any more for bond?

A. Nobody.

Q. Nobody would have to pay anything for bond. See? And that was to take care of all of them, wasn't it?

A. That is the way it goes.

Q. And Kaplan promised you there, if he could
769 take that \$350.00 out of the business each week, nobody connected with the case that was arrested would have to pay anything for bond?

A. That is what he said. "You don't have to worry anything about it, protected by that money".

Q. Now, maybe I can shorten this up. After Kaplan

said that to you, you did have to furnish bond, didn't you, for different people, and you had to pay for them?

A. I didn't pay them for nobody in that case.

Q. Well, didn't you pay for bond after that?

A. If I paid—I convicted in that place in Arlington Heights bond.

Q. What is that?

A. In Arlington Heights.

The Court: You paid for a bond in the Arlington Heights case?

A. Yes, sir.

Q. Did you pay for a bond in any other case?

A. No, I never paid for, no money.

Mr. Stewart: Well, you paid money to, you have been testifying here it was for fixing?

A. I paid money for bond, and I paid different money for that fixing.

Q. All right. Now how much did you pay for bond?

A. For bond was Eddie Dewes, Eddie Farber, I and Farmer Beisner, and four fellows,—two fellows was there, somebody else take care of it, I don't know fellows. We take care two, between us three, Eddie Farber, I am, and Dewes; that is \$2,000.00 bond; they say 10 percent apiece. We pay \$400.00 to Attorney Horton, and I pay \$300.00, which they say Eddie Farber and Eddie Dewes suppose to return money, and then in three ways, then Adam Widzes, he pay himself, \$400.00. I pay \$400.00.

770 Q. Did you ever get that money from Farber and Dewes?

A. No, sir.

Q. They cheated you, too?

A. Well, I didn't get that.

Q. They cheated you too, didn't they?

Mr. Ward: He said he didn't get it.

Mr. Stewart: They cheated you? I have a right to an answer.

Mr. Ward: Suppose he mentioned it he does not get something, it does not say he was cheated, that is a conclusion.

The Court: Objection overruled. Let the witness place a construction on it.

Mr. Stewart: All right.

Q. What do you say? They cheated you out of that money?

A. Well, maybe have some time. I don't know. He says he ain't got no money. What can I do?

Q. Well, he had money at the time he was dealing with you, didn't he?

A. Who?

Q. Dewes and Farber.

A. Well, sure.

Q. What is that?

A. Sure; he had money. He invested money there.

Q. Now, on the Spring Grove still, Ralph was arrested on that, wasn't he?

A. Yes.

Q. And he had to give a bond, didn't he?

A. No, he got out, I don't know who take it, I don't know nothing about who take it.

Q. Who else was arrested on that Spring Grove case?

A. Mr. Lincoln Rankin.

Q. And they were workers around the still?

A. Was working there, and get pinched, was raided still.

Q. And shortly after they were arrested, Kaplan 771 said to you that he didn't know those fellows, didn't he?

A. Well, no, no.

Q. Well, he told you he didn't know them, didn't he?

A. He says—he come next day, and says two fellows pinched, was that day still raided. We go 'round to the Fox Lake there.

Q. And didn't Kaplan say to you, "Don't worry, these fellows are going to be bonded. I don't know them fellows".

A. He says two fellows pinched, Lincoln Rankin going to be out as soon as they go to Chicago, going to be out.

Q. Didn't Kaplan say he never knew the fellows?

A. No, Kaplan say he knew.

Q. Didn't you testify Friday he didn't know them?

A. He says fellows pinched, two fellows pinched in the place, and he said soon as they goes to Chicago be out, that is all I know. He get them out without bond, with bond, I don't know.

Q. You paid Horton for Ralph's bond over here in the Insurance Exchange, didn't you?

A. No, sir.

Q. Now, it is on that case where Lincoln Rankin and

Ralph Boguch were arrested that you saw Kretske in his office, isn't it?

A. I didn't see in his office.

Q. What is that?

A. I didn't see that day.

Q. Farber took you over to Kretske's office.

A. No, Farber didn't, Farber taken over Arlington Heights case.

Q. It was in October, 1937 that you were at Kretske's office, isn't that right?

A. That is right. I think Arlington Heights case, yes. Not in 1937, 1938. I think is 1937.

Q. Well, you are not very sure of the date, are you?

A. Well, it is 1937. Was October, November,—no, I think 1938 I was there.

Q. Well, you are mistaken about that. The record 772 shows it was in 1937. Your examination before shows it too. That is when you were up and paid them \$300.00, and you were told to forget about it. Do you remember about that?

A. That place was on November, 1937.

Q. That is right. That is when you went up and talked to Kretske in November?

A. Yes.

Q. 1937?

A. Yes, November.

Q. And the case you were talking about was where Beisner, Farber, Widzes and Neiss were involved, that is right, isn't it?

A. That is right.

Q. Now, the Commissioner's record, for the purpose of our record, Your Honor, is 19788, the Commissioner's record shows that that complaint was issued on November 19, 1937.

The Witness: That is right.

Q. That is right?

A. It was that.

Q. Now, it was before those fellows, Beisner, Farber, Widzes and Neiss, it was before they had their Commissioner's hearing that you were up and talked to Mr. Kretske, isn't that right?

A. Yes.

Q. Now, at that time Kretske told you, you didn't need a lawyer, didn't he?

A. That is right.

Q. And during that conversation Kretske said "Red is there," and you said, "Who is Red?" And he says "You don't need to know that."

A. That is right.

Q. Well, you knew who he was talking about, didn't you?

A. Well, I don't know.

Q. What is that?

A. Well, I know, but didn't call Red. I told him
773 "who is Red?" He says, "Don't have to know."
That is all.

Q. You know now who he was talking about?

A. Yes, sir, I now know.

Q. You knew then?

A. I know.

Q. You knew it was Glasser, didn't you?

A. That is right.

Q. So Kretske took your money and told you that you didn't need to worry because Glasser was going to be there?

A. That is right.

Q. And you understood from that, that you were going to get a fix through Kretske with Glasser, you understood that too, didn't you?

A. That is the way we come there, he tells us.

Q. That is what you were looking for?

A. He just tell money.

Q. Wasn't it?

A. Yes.

Q. So you understood, when you gave that \$300.00 to Kretske, that Glasser would get part of that, and he would be there and help you, you understood that?

A. He was there.

Q. What is that?

A. He was there.

Q. I just stated your understanding, didn't I?

A. \$1200.00, no \$300.00.

Q. Well, \$300.00 was your share?

A. That is right.

Q. That is what I am talking about. Now when you paid that \$300.00, your share to Kretske, you understood you didn't have to worry about the Commissioner hearing, because Glasser would be there, isn't that right?

774 A. He says, "You don't have to worry, nobody, the whole case was taken care."

Q. Because Glasser would be there and take care of it, isn't that right?

A. Well, I don't know, he didn't say. I told him what is lawyer going to be?" He says, "You don't need no lawyer." I say "You go yourself?" He said, "No, somebody would see everything is all right."

Q. And he said Red would be there, it would be all right?

A. He said somebody see my fellows come there, everything be all right.

Q. Now, what can happen at a Commissioner's hearing, do you know?

A. It was continued.

Q. I mean what can happen in any case? What are the different things that can happen?

A. I don't know. I never was before Commissioner, I don't know.

Q. Well, you have talked with these different boys that have been down at the Commissioner's, and got away from here again, haven't you?

A. Yes, sir, he comes back again, says continued case.

Q. All right. You know, don't you, a Commissioner can hear the case, and he can throw it out, that is one thing he can do, isn't that right?

A. I don't know just what they said.

Q. Another thing he can do is, he can hold all people over to the action of the District Court, you know that, don't you?

A. I don't know that.

Q. What is the worst thing that could happen to the defendants when they go in before the Commissioner?

Mr. McGreal: I object to that.

The Witness: I don't know, I never was there once in my life.

775 Mr. Ward: What is the worst thing?

Mr. Stewart: Well, the worst thing would be they should get held over.

Mr. Ward: I suppose they could get shot, if somebody was there to shoot them.

Mr. Stewart: You think that is funny, I don't.

Mr. Ward: I move to strike the answer.

Mr. Stewart: I move to strike Mr. Ward's remark.

Q. What is the worst thing can happen?

The Court: There is nothing wrong with that question. Objection overruled.

Mr. Stewart: Now, Mr. Raubunas, those people you were fixing that case for, Beisner, Farber, Widzes and Neiss, as a matter of fact, the record shows that they were held over to the Grand Jury. You know that to be a fact, don't you?

A. I don't know nothing about it. That they just says don't worry about it. It is all right. Go home.

Q. Well, you saw the fellows afterwards, didn't you?

A. Yes, sir.

Q. And they were out on bond, weren't they?

A. That is right.

Q. And you wanted to know how they got along at the hearing, didn't you?

A. I don't know, come back and says continued case. Continued case; case was continued four times.

Q. Yes, it was continued, then you know it was heard, don't you?

A. Yes, sir.

Q. Then when it was heard, what happened to it?

A. Then Kretske says throw out, because—

Q. It was thrown out?

A. Yes, sir.

Q. Did you ask Widzes if it was thrown out?

776 A. Well, Widzes says he don't know either, well, he says must be threw out.

Q. Well, Widzes knew he was held to the Grand Jury, because he had to furnish another bond, and you knew it too, didn't you?

A. I don't know, after while furnish bond in 1939, again indicted.

Q. And you also know that Beisner and these people were indicted in that case afterwards too, don't you?

A. Yes, sir, 1939.

Q. And that indictment, Mr. Glasser appeared in that for the Government then, before the Grand Jury, you know that too?

A. Yes, sir, I was first—

Q. Why don't you just answer my question. You know it, or don't know it. You know Mr. Glasser had those men held over at the Commissioner and then represented the Government before the Grand Jury, and had them indicted, you know that, don't you?

A. I didn't know that—I know was indicted.

Q. Well, it didn't look to you like the case was fixed, did it? Just tell us honestly, did that case look to you like

it had been fixed after you gave Mr. Kretske that money and the defendants were held to the Grand Jury, and then they were indicted. Now, did that look like it was fixed to you?

A. Well promise me, they no fix.

Q. Well, they lied to you?

A. I am in jail for it.

Q. Every time they told you they were fixing a case they were lying?

A. Well, who lied?

Q. Well, Kaplan lied to you when he told you he had the Commissioner—that case fixed?

A. Yes, sir.

Q. He lied when he told you he had the Arlington Heights case fixed?

A. Arlington Heights, Kretske supposed to fix, for that money.

777 Q. And Farber told you he had a better fix than Kaplan, so you let Kaplan out of the Beisner farm?

A. I didn't let out. Farber let out.

Q. Farber told you he had a better fix than Kaplan?

A. That is what he told.

Q. Then you found out Farber was lying?

A. That is the way I go in and lose money.

Q. That is why you lost money?

A. Yes, sir.

Q. That is why you are in all this trouble?

A. I am in trouble. And I tell my whole trouble.

Q. Well, maybe this is a little curiosity on my part. He said the other day, because of his glasses he couldn't read. I don't know. Those letters are big enough for you to see (indicating)?

A. Sure; British War Ship Sunk.

Q. You can read that?

A. Yes, sir.

Q. You could read that part. "British War Ship Sunk"?

A. Yes, sir.

Q. Did any of these statements you signed—this great big statement, did the Government Agents give you that statement to have with you over in the jail?

A. What do you mean?

Q. Well, you were left waiting over in the jail to go on the stand, and while you were there did you have with you the big long statement?

A. You mean to the Government? I never.

Q. Nobody over there got any papers?

A. No, sir.

Q. After you made a big long statement, did you talk to Mr. Bailey again?

A. No, sir.

Q. You never talked to him after that?

778 A. No.

Q. Did you ever talk to anybody connected with the Government after you made that statement?

A. No, sir.

Q. Now, Friday, when I was asking you if you didn't sign a statement before you signed your big long statement, and you said that you didn't remember, or did you?

A. Well, I signed—I told I signed.

Q. I know you say it now, but when I asked you first, I asked you a couple of times, and you stated you didn't remember, isn't that right?

A. Well, I don't remember. I make broken language, some time I don't understand.

Q. You understood me, you were just going to say you didn't remember to see whether or not I could get the statement?

A. I signed it.

Q. You knew you signed this statement all the time, didn't you? You knew you signed this little statement all the time, didn't you?

A. Sure.

Q. And you knew that last Friday, did you not?

A. No, no, sir.

Q. Last Friday you told us about how Mr. Kretske met you over at 12th and Halsted Street, and tried to get \$200.00 from you?

A. Yes, sir, that is right.

Q. That is not in your statement of July 12th?

A. Well, I said maybe didn't understand me right, I tell them 12th and Halsted.

Q. You told them, but they may not have understood you, is that it? So these men working for the Government and Department of Justice, and Mr. Bailey, you told them, and they didn't understand?

779 A. Maybe I mix up in my words.

Q. Do you know how much the bonds were for Beisner, Farber, Widzes and Neiss, in that Beisner farm case, when they went before the Commissioner?

A. Was \$2,000.00, or something, I don't remember.

Q. And you told us a few moments ago you know what the bonds premium was?

A. \$2,000.00 it was.

Q. You know how much the bondsman charged?

A. 10 percent, they says.

Q. And you know how much that is, don't you? 10 percent?

A. Well, the fellows, the two fellows they take out. On two fellows I don't know who take. Eddie Farber go out himself, and Neiss, somebody else take.

Q. Frank Hodorowicz was interested in Neiss?

A. I don't know.

Q. You know Frank Hodorowicz, you heard of him in connection with this case?

A. I heard of him, but I don't know very well.

Q. You heard of him, did you?

A. Yes.

Q. You knew his business, didn't you?

A. No.

Q. You knew he was a bootlegger, didn't you?

A. No, sir, I don't know what business. I got my own business. I don't know nothing about somebody else.

Q. You don't want to tell us anything about Frank Hodorowicz?

A. What I want to tell when I know I don't know nothing about the man.

Q. You knew he was interested in getting Neiss out on bond?

A. Well, I don't know that. I told exactly, I don't know who takes Neiss. I know Farber get out himself, who takes him, I don't know.

780 Q. Now, after you went up to Mr. Kretske's office a few times you called him a crook, didn't you?

A. Yes, sir, he takes too much money from me.

Q. You called him a crook, didn't you?

A. I don't call him exactly crook, I said it is not right, it is crooked business.

Q. And you were mad at him because he didn't take care of you?

A. I am not mad, I walk out, I didn't go no more.

Q. But you didn't, at any time, say to Mr. Kretske, "You crook, I saw you meet Kaplan," you never said that to him, did you?

A. Never.

Q. And when you sat down, talking with these boys, these boys that are in the business of running stills, about getting people out on bond, about fixes and all of those things, you never told any of those bootleggers you had seen Kretske and Glasser meet Kaplan?

A. Never told anybody, because I was afraid.

Q. And the reason you didn't tell them was it never happened?

A. It happened. I tell anything I see.

Q. As a matter of fact, Frank Hodorowicz built your stills for you, didn't he?

A. He didn't build my still.

The Court: What is your answer to that last question?

A. He didn't build my still.

Mr. Stewart: Q. After you left Mr. Kretske's office, going up there several times, and he said he couldn't do anything for you, you got Mr. Anderson for your lawyer, didn't you?

A. That is right.

Q. And you talked to him about the case, didn't you?

A. No, I just told trouble, says Okay, he says he take my case, he take it, he defend it.

Q. Mr. Stewart: Your Honor, I wish to lay the foundation in order, if he denies this, we will impeach 781 this, because we expect to have the testimony of Mr.

Anderson, and I would like to have the privilege of making this preliminary statement. I don't mean there is any truth to it, I don't mean to throw dirt. I mean about Bishop Sheil, the matter here, and Mr. Ward; I don't mean they could have done a thing they are talking about. That is my point.

Q. When you were talking with Mr. Anderson you told him that you knew a girl who was active in the Catholic Church, who could contact Bishop Sheil, and Bishop Sheil was responsible for Campbell's, that is the District Attorney's job, you told Anderson that?

A. Never in my life. I never told him that.

Q. And you told Mr. Anderson that you knew a friend of Mr. Ward's, and you could fix Mr. Ward?

A. I don't know at all nothing.

Q. You didn't tell him that?

A. I told nobody. I don't know Mr. Ward. I never heard before I come to hearing.

Q. All I want to know is did you tell these things to

Mr. Anderson? Did you tell Mr. Anderson you knew how you could fix Glasser?

A. I didn't tell him nothing. I talked about my case, and he says he take the case, he defend me, that is all.

Q. You didn't tell him anything about how you would like to fix your case, did you?

A. I didn't tell nothing.

Q. Well, didn't you want to fix your case then?

A. Then I tell them I got trouble, my case, and defend me. I tell never know Kretske and give money, he didn't do nothing. I want another lawyer to take it. I said I am a little sick. I take it.

Q. Can you tell this Court and Jury what made you change your mind all together, to be honest and not want to fix your case?

A. No, sir.

Q. You can't give any explanation for that?

A. I talking about the case. I talked with Anderson of the case.

782 Q. Didn't you want to still fix it if you could?

A. I don't want fix, because he says he go into it honest. Say he said he didn't fix, that is the way he tell me.

Q. Then you did talk to him about fixing it, didn't you?

A. No.

Q. Well, how did he come to say the thing you just told us now?

A. I didn't tell nothing. I tell him about the case, that is all. He says I go.

Mr. Stewart: May I have that answer read to me he just made a minute ago, please?

(Question and answer read.)

Q. That was what Mr. Anderson told you, was it?

A. Yes.

Q. And the reason Anderson told you that was because you were trying to get Anderson to fix your case with the Bishop?

A. I didn't tell Anderson to fix, because I just say Mr. Anderson defend me. He said he surely would.

The Court: Did you ever talk about him fixing your case with the Bishop of the Church?

A. Never, never. I didn't.

Mr. Stewart: Q. Well, you have some indictments pending against you now, haven't you, you have an indictment

on the Spring Grove case pending against you, haven't you?

A. That is right.

Q. And by coming out and giving testimony you are trying to help yourself in those cases, aren't you?

A. I tell everything what I know.

Q. Well, do you expect it to do you any good?

A. Well, if I get, I got to forget. If I give orders it is not my business. That is the United States Government.

Q. Didn't Mr. Ward tell you right in open court to quit having people call him up to have him try to fix the case?

A. Can I stop people?

783 Q. Didn't Mr. Ward tell you right in Court?

A. Can I stop people? Tells me once in Court, and somebody call up, and I don't know nothing about it, never see in my life, can I stop somebody calling up?

Q. Who was that doing that calling up of Mr. Ward?

A. I don't know. I talk to nobody except Mr. Anderson, lawyer, that is all.

Q. And during the trial of your case, you heard Mr. Ward accuse you of being the treasury of all of this bootlegging reign, the banker, that is what he said about you?

A. Somebody wants to squawk me? Can I stop it?

Redirect Examination by Mr. McGreal.

Exhibit #92 has my signature. I signed that, I don't remember the date it was. Those are my initials appearing on each and every page of it, I don't know how many pages in the statement. Eighteen or seventeen. I gave that statement to Mr. Devereux and Mr. Bailey. At the time I made that statement I was here in Federal Building, in Marshal. I was convicted in the Arlington Heights case, July 19, 1939. I was taken from the county jail to the penitentiary July, 1939. I was taken to the county jail after I was convicted. I was taken to the penitentiary about ten days later, the 28th.

Q. And when did you decide to tell the story that you have told us?

A. I decided before I was here, when I left I tell I go to that case and know—

Q. When you mentioned you didn't have time—

A. That is right.

Q. On Mr. Stewart's cross examination, you mentioned you were about to be taken to the penitentiary, and you couldn't give a full statement, is that correct?

A. Yes, sir, I told them I had charged, I am make full statement, because was forget something, it is long 784 time, and I have excitement, and I get my sentence—

Q. There is nothing in the first statement that is contrary to the second, is there?

A. That is right.

Mr. Stewart: I object. It is a matter of argument to the Jury.

The Court: The statement will speak for itself.

Mr. McGreal: I desire at this time to read the statement which he had made, to the Jury.

Mr. Stewart: I object to that, because I didn't offer that. I have a right to cross examine and show as a matter affecting his credibility that he didn't have some material statements in the first statement he gave. The fact he put it in some other statement does not change that.

Mr. McGreal: Mr. Stewart said the alleged short statement. I desire at this time to read the other.

The Court: If one goes in, the other ought to go in. Did you offer it?

Mr. Stewart: I only offered one. I object to the other, because the one is offered in order to impeach the credibility of the witness. As I understand it, that does not give them a right to put in any other, except if they had one made at the same time, or before this.

The Court: Is there any doubt as to whether or not one statement contains statements that are contrary to those contained in the other?

Mr. Stewart: Well, this first statement contradicts the second statement in this—

Mr. McGreal: That is merely the statement by Mr. Stewart, and I object to it.

Mr. Stewart: All right, I intend to argue when our turn comes that the evidence,—that he left these more important things out of this statement when he was discussing 785 the subject matter, that is impeaching. Now the fact he later on put those in another statement, that does not save him from this.

The Court: Is it understood everything contained in the second statement, everything contained in the first statement is contained in the second, and in addition thereto there are other statements?

Mr. Stewart: Well, I can't agree to that. I have not seen the second statement, and I object to encumbering the record with it. I assume the second statement is about what he has been testifying to here, but I have not seen it.

Mr. McGreal: Now, Mr. Stewart questioned him about the second statement, as I recall, Your Honor, on his cross examination Friday.

Mr. Stewart: I just asked him if he signed it. I just wanted to show he signed two statements, Your Honor. I don't think we should be handicapped now when the Government offers that on their side of the case that is hearsay, they can't substantiate or corroborate this man. That was made over in some office, somewhere.

The Court: If you contend one statement contradicts the other, then both should go in.

Mr. Stewart: No, I don't agree—

The Court: If you contend the second statement contains everything the first statement contains, but contains much more, then I don't see any objection.

Mr. Stewart: I understand my associates have an authority, Your Honor, if your Honor would like to see it. But I don't need to bother as far as my case is concerned, about the second statement. I am going to argue to this Jury he has told falsehoods, and one of the reasons I am going to urge is if it were true he would have had it in the first statement. Now, if he puts it in the second statement—

Mr. McGreal: If Mr. Stewart is going to argue to this Jury, this witness is telling a falsehood, he ought to give the Jury all the information.

786 The Court: The court will overrule the objection to that, but I don't want you to read it at this time. You may use it for redirect examination, if you see what I mean, I don't want you to read it to the Jury at this time.

Mr. McGreal: Yes.

Redirect Examination by Mr. McGreal (Resumed).

I had my glasses on on those three occasions I mentioned, and was able to see very well those days. I was inside the delicatessen store on the first occasion, there were two old people sitting there.

Q. Now, who did you see first?

A. The car coming, I see Louis Kaplan coming.

Q. You mean Louie Kaplan, the defendant in this case?

A. That is right.

Q. You are not mistaken about that?

A. No, sir.

Mr. Stewart: I object to that. It is not re-direct.

The Court: Objection overruled.

Mr. McGreal: Q. Now who else did you see?

A. Then I see car come over, and Louie come from parking his car, come the north-west corner, I see north-east corner in delicatessen, when car comes.

Q. And who was in that car?

A. Green car, light green car, come there, and I see Kretske driving.

Q. You mean the defendant, Norton Kretske?

A. Yes, sir.

Q. That is the man you saw?

A. Yes, sir, and Daniel Glasser was sitting behind him.

Q. You mean the defendant, Daniel Glasser?

A. That is right.

Q. You are not mistaken about that?

A. No, sir.

787 Q. Now Mr. Raubunas was the Western avenue still raided?

A. Yes, sir.

Q. And that was raided by agents of the Alcohol Tax Unit?

A. Yes.

Q. Was the Spring Grove still raided?

A. That is right.

Q. Was it raided by agents of the Alcohol Tax Unit?

A. Yes.

Q. Was the Beisner still at Arlington Heights raided?

A. Right.

Q. Was it raided by agents of the Alcohol Tax Unit?

A. Right.

The Witness: I was picked up in connection with the Western avenue still, that is the incident I referred to on December 24, 1936. I was never arrested after that. I know what disposition the Grand Jury of the United States Federal Court for the Northern District of Illinois made with reference to my connection with the Western avenue still.

Q. Do you know what disposition the Grand Jury made in the matter?

A. I don't understand.

Q. Did you understand those words?

A. No.

The Witness: An indictment was voted against me in connection with the Western avenue still, I was indicted, and then it was some witnesses too on me. I am now serving my sentence for my connection with the Arlington Heights still. I have not been convicted for my connection with the Western avenue or Spring Grove still.

Now going back to that corner on Kedzie and Douglas Boulevard, the first time I looked at Government's exhibit 82 and 83, to identify the pictures, I was in this delicatessen store here (indicating). I first saw Kaplan on 788 the north-west corner. This car that I mentioned came from east, going west, and first stopped at the stop light in front of the delicatessen store. They blow horn and look both in that like this. Then just pass. I see Louie stay there and pass on Kedzie. The car cross Kedzie avenue and stop there, and Louie get back in the car and go west. I don't know how long it stayed at the stop-light, not long, about a minute. There was nothing obstructing my view at all, the news stand that was referred to, was on the other side of the Kedzie avenue side, so when I looked out of the window of the delicatessen store, there was nothing to obstruct my view and I saw the parties in that car for one minute, and those are the men I identified heretofore.

On the second occasion I was standing in the same place. When I first saw Louie Kaplan he was in the car, he was parking, he parked his car, north of Douglas Boulevard, on the east side of Kedzie, he got out of his car, then I pass, then I see. I was looking out of the window of the delicatessen store on the Kedzie side. Nothing was obstructing my view, the news stand was right on the corner so I could see right out the window. When Louie Kaplan got out of the car, he crossed Kedzie Avenue, the car I refer to came from the east, it stopped same thing, on the same corner. It stopped pretty near same thing. About one minute. I saw the occupants of the car, they are the men I refer to.

On the third occasion I was in the delicatessen store. When I first saw Kaplan he walked from the north to go south, on the west side of Kedzie. The delicatessen is

on the east side, that car on this occasion came from the east going west, it stopped right in front of the delicatessen store, then passed, crossed Kedzie avenue and then stopped again. At no time was my view obstructed.

In March 1936 I went to the Great Northern Hotel, with Kaplan. Just before we got to the Great Northern Hotel,

I had a conversation with him. He says he wants to 789 see people. That is all. I stood near the door-way,

come in, see he was walk out to the restaurant and lobby, I was about fifteen or eighteen feet from the stair-way I mention. I saw Kretske walk from the restaurant and walk close to Kaplan. Then they talked down-stairs, they were down-stairs ten or fifteen minutes, I saw them when they came back up, they came out and Kretske walked close to restaurant, and he walked towards me. During the time I was connected with the Western avenue still, I was working inside there, Adam Widzes and Ralph Boguch and Boguch's father. Kaplan and Farber came there and tell what we should do.

Q. And was there any coal used in connection with that still?

A. Was coal there? We find coal all the time. I don't know.

Q. Was coal there?

A. Yes, sir.

Q. Do you know who ordered that coal?

A. No.

Q. Did you see the coal delivered from time to time?

A. Used to come there.

Q. Do you know what company delivered the coal?

A. I don't know.

The Witness: I figure that still operated seven months, the Spring Grove still did not operate long, and the next was the Arlington Heights Beisner Farm.

Recross Examination by Mr. Stewart.

When I saw Glasser and Kretske up there when I was looking out the delicatessen window, they were well dressed, was one grey suit, another one black suit.

Q. Which one had the grey suit?

A. Overcoat.

Q. Overcoat with grey suit, who had that?

A. Both of them had clothes, I don't see, I just see

faces, and that is all I can see. I can't see, because in the car was sitting down.

790 The Witness: I never saw them get out of the car.

I never got any better view of them than that. Each time I saw them they looked about the same. When I was in the Shell gas station spying on Kaplan, and I was a foot and a half away from him, when he called up, I did not go there with Kaplan, I just going back to that gas station. Sure, I going over there, Kaplan knew I was there, he call up, and I was just here, he says Douglas and Kedzie.

I have not filed any income tax return. I got nothing to file for personal property tax return. The \$6,000.00 I had when I sold my tavern I made over a period of thirty years.

Recross Examination by Mr. Ealaban.

I first met Tony Horton in the Insurance Exchange Building in November, 1937, I am sure that is the first time I met him. I met him in the Insurance Exchange twice, the second time was two days later. I know Ralph Boguch. I don't know if I knew him in February, 1937. I first met him in 1935. So I knew him in 1937. I never worked with Boguch. He just worked there. We worked together. And when I was operating the still I worked there daily with him, we working inside. He was not a partner, he was an employee. I didn't look after him, if he got in trouble. I didn't look after his interests. I never requested Tony Horton to make Boguch's bond when he was arrested. I didn't see Tony Horton in the month of February, 1937 in the Insurance Exchange Grill in connection with making the bond of Ralph Boguch. Eddie Farber called up and said we will go to the Insurance Exchange.

Q. That was in February?

A. That is right.

The Witness: I don't know nothing about Boguch being arrested in February of the same year. I don't know nothing about. It was November, 1937—I didn't catch, I can't hear. The first time I went to the tavern in the Insurance Exchange Building was in November, 1937.

Boguch was arrested on Western avenue in July, 1936.

791 That was a year and four or five months before I met Tony Horton for the first time. I don't know who made Boguch's bond, I never inquired. I never met Horton before November 1937. Before we went down to

the Insurance Exchange Building, Farber said that is the bondsman, going to make the bond. He introduced me to Horton. It is not a fact that I introduced Farber to Horton. I don't know who made Farber's bond. He got out on bond the same day. It is not a fact that I introduced Eddie Dewes to Tony Horton. It is not a fact that I introduced Louie Kaplan to Tony Horton. I have been to Tony Horton's home just once, when he called me up. He called me after that case. I don't know what date, I forget the date. I give them \$300.00 in November, it is about three weeks later. I think in December, 1937. I am not sure exactly but I know it is not long. He called me at my home and I went over there. That is the only time I had ever been to Tony Horton's home. I do not know John Stankus, I never worked with him in a still, my answer is no. I know Adam Moles, I never worked with him in any still. He was just there in Arlington Heights, he give still, boiler and car. I do not know John Strickland, I don't know nothing about John Strickland and Adam Moles being indicted in Milwaukee. I didn't go to Tony Horton's home before November or December and ask him to get five people out on bond who were arrested in Milwaukee, that does not refresh my recollection as to when and where I met Horton. I didn't pay Horton \$750.00 for the bonds of those people that were indicted in Milwaukee. I swear never. (Witness raises hand.) I didn't ask Horton to go to Milwaukee and find out how much the bonds were. I never paid Tony Horton for any bonds in Milwaukee. It is not a fact that at that time and place I said Kaplan was in hiding and couldn't go to the front, and I was going to the front to pay those bonds. I never did. Once I say I paid my bond. I never had a still in Racine, Wisconsin. I never had a interest in a still located in a mine in Indiana, in 1937. I never talked to Horton about that. I

792 I did not own this still in Montana with Ralph Boguch. I was not associated with Joe Saltis mob at one time. I heard about him. I read in the paper like anybody else. I don't know the man. I read the paper with my glasses all the time. When I went to see Tony Horton to make the bond in the Beisner case there were four people arrested. I don't remember if the bonds were \$3,000.00 apiece originally. We paid them \$2,000.00. Farber had gotten out the night before. I don't know on what bond. It is not correct to say that the \$1200.00 was

10 percent of \$12,000.00 of bonds which had been fixed before they had been made. I did not say that \$1200.00 was too much for four bonds at \$3,000.00.

When I left Chicago I was in the penitentiary at Leavenworth, Kansas. I went there about July, 1939. I don't remember when I returned from there to Chicago. I guess we left there September 6, so that means I was in the penitentiary part of July, then all of August, and six days in September. I was sentenced to three years, I served a little better than two months when I was brought back to Chicago. I don't know at whose request I was brought back, case come up. Nobody talked to me about the case after I was in the penitentiary. I knew I was coming back to Chicago, I knew I was indicted in the Spring Grove case, I did not know I was coming back to make a statement to testify against Glasser and Kretske, because Anderson told me I come back, I got another indictment in the Spring Grove, so when I left the penitentiary I thought I was coming back to answer to this other indictment, pending here. Nobody visited me in Leavenworth, that is in this court room. Mr. Bailey did not visit me at Leavenworth. Upon my return I went before Judge Wilkerson, and then to the Marshal's office, then back to the county jail. After while I decide to make my statement. I talked to Mr. Bailey and Mr. Devereux. It was after I arrived from the penitentiary and while I was here in Chicago answering another indictment that I decided to make a further statement. Before I go to penitentiary I make that statement, and I don't give all, because I was forget that. Forget 793 their things which I know you know, takes long time, four years. I can't tell exactly how many days I was in Chicago from the time I returned here from Leavenworth, before I left. I forget that. I think five weeks. I think forty-four days was right, in the county jail, five weeks. I don't know how many times I was here to see Agents representing the Government in connection with the testimony I have given here during those forty-four days. I guess about ten times. It was a big statement, I tell everything. I started making that statement the first time I came here. Oh, you mean from Leavenworth? The long statement then I signed that on the last day. I didn't sign it the first time because I was getting everything, and I told them them people fill out, and after while everything I tell them, everything I knew, and then call

me back again to sign, and I sign. The first time I came down here from Leavenworth I gave them the whole statement. I came down ten days and every day I tell them, and was writing. Each day I went over the statement with them. Nobody visited me at the jail. My wife visited me there. Nobody representing the government. I left Chicago October 24th, 1939. I have been in Milan, Michigan, since October 1939, that is a reformatory. To me it is the same thing as the penitentiary. I am working doing the same kind of work at Milan as at Leavenworth, I worked at Leavenworth in shoe factory, I work in bed factory in Milan.

Recross Examination by Mr. Stewart.

I know a man named Dvorak.

Q. He came out to your house because he was not getting his money, working at the Beisner farm, don't you remember that? You called the police?

A. Well—

Q. Don't you know the police took this fellow out of your house?

A. One time my wife called, not me, to pinch him.

794 Q. He was out to your house to try to collect some salary?

A. I don't know nothing about it. I never see man like he.

Q. Your wife called the police, were you home when your wife called the police?

A. No.

Q. They took him to the station, and he told them about the still, and Beisner.

A. Yes, he is cousin, his uncle bring to work out to outside to work, then he come there with Government star he has for the police station, he pinched him, they shaken down, I don't know what he did.

Q. You just cause trouble for everybody you deal with?

A. I no cause trouble to no man, no, that is lie.

Redirect Examination by Mr. Ward.

I don't know if that man was named D'Avorak.

Q. Is that Eddie Farber's nephew?

A. Eddie Farber's nephew.

(Witness excused.)

795 GORDON MORGAN, recalled as a witness on behalf of the Government, having been previously sworn, was examined and testified further as follows:

Direct Examination by Mr. Ward (Resumed).

I am the same Gordon Morgan that was previously on the witness stand in this case and was withdrawn.

(Here witness identified Exhibit 93 as being a part of the record kept by the July 1937 Grand Jury, and that on August 11, 1937 D. D. Glasser, the defendant in this case, as Assistant United States Attorney, presented evidence in the case of Louis Kaplan, Victor Raubunas, Edward R. Dewes, Ralph Boguch, Lincoln Rankin, Stanley Slesur, Louis Pregenzer and Joe Cole, to said Grand Jury, as indicated by said Record, that the case involved the violation of several sections of Title 26 and of Section 88, Title 18, United States Code. That said record further shows that Sylvan R. White, Joe Cole and Robert W. Nessler were the only witnesses, and that on that day said case was withdrawn from the Grand Jury.

Witness also identified Exhibit #94 as the same type of document of the November 1, 1937 Grand Jury and that it indicated that on October 7, 1937, a case involving Victor Raubunas, Adam Widzes, Louis Kaplan and Ralph Boguch was presented by D. D. Glasser, a defendant in this case, as Assistant United States Attorney, regarding the violation of certain sections of Title 26, and 88 of Title 18 of the United States Code, and that there were called as witnesses on said day one James Brown and Edward Jawor; that on October 17, the Grand Jury voted a no-bill. That item 23 appearing directly underneath 22 of Exhibit #94 showed that the case of Lincoln Rankin, Louis Kaplan, Victor Raubunas, Edward Dewes and Stanley Slesur was under consideration and Sylvan R. White was special investigator for the Alcohol Tax Unit in charge of that case; that D. D. Glasser appeared for the Government; that no witnesses attended that particular session, and it was withdrawn at the request of D. D. Glasser.

796 That #95 indicates that on May 17, 1938 the case of Louis Kaplan, Victor Raubunas, Edward R. Dewes, Stanley Slesur, Joseph Cole, Louis Pregenzer, Lincoln

Rankin, Ralph Boguch was presented to the Grand Jury charging violations of several sections of Title 26, that the defendant Glasser appeared for the Government and Sylvan R. White was the Agent; that the witnesses were R. W. Nessler, Grace Hollinger, H. D. C. Bannister, Sylvan R. White, A. Schmeltzer, Cecil Simms, E. Simonsen, W. Blackman, J. Fernandez, Louis Pregonzer and Joe Cole; that a true bill was returned on May 17, 1938 against Stanley Slesur, Joe Cole, Louis Pregonzer, Lincoln Rankin and Ralph Boguch; That at the same time a no-bill was returned against Victor Raubunas, Louis Kaplan and Edward R. Dewes; that on June 1, 1938 an indictment was returned against those true bills as D. C. #30992.

That Exhibit #96 is the transcript of testimony taken before the Grand Jury on May 17, 1938.)

Whereupon the Report of Francis J. Campbell on the Western Avenue still was offered in evidence as EXHIBIT NO. _____, to which offer the defendants objected and which said objection was by the Court overruled. Whereupon the said document so offered was received in evidence marked No. _____, and was thereby made a part of the Record herein.

(Witness excused.)

SYLVAN R. WHITE, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Sylvan R. White, I am a special investigator of the Alcohol Tax Unit. I made the investigation regarding the Spring Grove still, it started on January 19, 1937, when a large illicit alcohol distillery was seized in the town of Spring Grove, Illinois. I was given the assignment the 10th of February, 1937. I submitted 797 a final report in the month of July, 1937. Exhibits #97 to 112 are photographs taken of the Borden Wieland Milk Plant in Spring Grove in which the distillery was seized. I was not on the seizure and cannot identify photographs of the distillery.

Mr. Stewart: We will agree they are the pictures.

The Witness: I talked to Mr. Glasser about the case for the first time on March 30, 1937 and a number of times

after that until the report was completed. My first conversation with Mr. Glasser was on March 30, 1937 when we requested approval for the warrant of arrest of Joe Cole and Louis Pregonzer, which Mr. Glasser did approve. After I completed my investigation I talked with Mr. Glasser at 34 different conferences concerning the presentation of the Spring Grove case. The first conferences were regarding the names of the defendants and possible witnesses and their testimony. This was gone over, together with the report as written concerning the case; and on one occasion, a conference was held with Mr. Igoe, then United States Attorney, Mr. Herrick, Mr. Glasser and myself in Mr. Igoe's office, regarding the presentation of this case.

At that time Mr. Glasser stated it looked to him like the case against Louis Kaplan, named as principal in this violation, was a very good case; that he had heard of Louis Kaplan in rumors and talks and hearsay, as a notorious bootlegger in the City of Chicago; and that there was apparently from the report, sufficient evidence to obtain an indictment and conviction. He stated that was the type of case he liked to see brought into Federal Courts, that there was a preponderance of the evidence against the parties.

When the case was presented to the Grand Jury for indictment, I went in first and outlined the case as I seen it and heard it from the witness.

Q. Who was present at that time?

A. Mr. Glasser was handling the Grand Jury.

The Witness: I wrote down the names of the defendants in the order of their importance and briefly stated the testimony we expected to show against each defendant. I put down No. 1, Louis Kaplan, No. 2, Victor Raubunas, No. 3, Edward R. Dewes, No. 4, Stanley Slesur, No. 5, Joe Cole, No. 6, Louis Pregonzer, No. 7, Ralph Boguch, No. 8, Lincoln Rankin, No. 9, Joe Fernandez, No. 10, Cecil Simms, I stated I would make a recommendation or suggestion that three of the defendants be used as Government witnesses, they have indicated their willingness to so testify.—Joe Cole, Cecil Simms, and Joe Fernandez. After my testimony Joe Cole and Nessler were called in before the Grand Jury, that was on August 11. Joe Cole was in the Grand Jury room for about a half an hour and was then excused, and then was called back a few minutes later before another witness was called, and came out again in a very few minutes, and Mr.

Glasser stated to me that, in his opinion, Joe Cole was crazy; that this witness had made a clear statement to start with, and some members of the Grand Jury asked for further information of Mr. Cole, and this time had given answers contrary to what he had done the first time in the Grand Jury, and he said he could not be depended upon, he did not think he was reliable at that time, and the rest of the witnesses were then dismissed and the case was postponed for a later date. The case was again presented to the Grand Jury about November 1, 1937 when I again presented the testimony as we expected it to develop in the trial of the case and as the witnesses had told me and given me affidavits and statements naming the order of the defendants. I did the same thing on a black-board as before, that is I mentioned the defendants and the order of their importance. Again the other witnesses were not called. I believe Alfred Schmeltzer testified, and Simonsen and Blackman, but were again excused. At least, the rest of the witnesses were excused and the case was taken off the docket and postponed. I don't believe I had any conversation immediately after that with Mr. Glasser, regarding 799 the procedure of the case or any reasons for it being postponed at that time. I was again called before the Grand Jury on that case on May 17, 1938 at which time I again outlined the case to the members of the Grand Jury and again on the black-board wrote down the names of the defendants and the order of their importance. At this time two or three witnesses were called. Joe Cole was called as a witness this time, but was only in the Grand Jury room for a period of about two minutes. I did not quite understand that. Joe Cole was a witness in the Grand Jury room. I had taken the statement of Joe Cole, five typewritten pages, concerning his knowledge of the activities of the defendants in this case. To read that would take fifteen minutes, at least. He was in there approximately two minutes. Another witness, another man, who had become or was willing to be a witness, Louis Pregonzer, was called before the Grand Jury and Mr. Glasser told me he refused to sign an immunity waiver, and would not testify before the Grand Jury, and he was excused. I do not recall any other witness called before the Grand Jury outside of Schmeltzer Simonsen and Blackman. Blackman and Simonsen were not witnesses against

Louis Kaplan, they were witnesses against Joe Cole and Louis Pregonzer. I recall the witness Peter Frett, that did not testify before the Grand Jury. I had a conversation with Peter Frett before that day. I met him about the 21st of February, 1937. He was the man who sub-leased the Borden Weiland plant to the person who had installed the distillery.

Exhibit #113 is my completed report concerning the Spring Grove distillery, which carries my signature. I have seen that report in Mr. Glasser's hands, on his desk in the office, and in the Grand Jury room at the time of the presentation. We discussed practically every statement made in this report innumerable times.

(Whereupon the said document was offered in evidence by the Government to which offer the defendants objected, and which said objections were by the Court overruled, whereupon the said document so offered was received in evidence marked #113, is hereby made a part of the record herein.)

800 The Witness: I discussed with Mr. Glasser this witness Peter Frett. This conversation was held about the 9th of August when Mr. Glasser requested I furnish him a list of the people I would like subpoenaed before the Grand Jury. Peter Frett's name was given. On the date that this case was presented to the Grand Jury, Mr. Glasser showed me a letter from Peter Frett, from somewhere in Pittsburgh or Philadelphia, stating he was unable to appear before the Grand Jury on that date. The second time the case was presented before the Grand Jury, I again submitted another list in which Peter Frett's name was listed. At that Grand Jury Peter Frett failed to appear; at least, I did not see him among the witnesses who were waiting to testify before the Grand Jury. Mr. Frett did not appear at that Grand Jury or the subsequent Grand Jury that returned the indictment. I informed Mr. Glasser that Peter Frett was not present at the time and he told me Joe Cole was not responsible and suggested we call Peter Frett before the Grand Jury and go ahead, but he could not find him. I talked to him when the witness failed to appear before the Grand Jury. I don't believe I talked to him after that about that particular witness. I received a report after that from the United States Attorney's office that the defendants Louis Kaplan, Victor Raubunas, and Edward R. Dewes were no-billed, and that Joe Cole,

Stanley Slesur, Louis Pregonzer, Lincoln Rankin and Ralph Boguch had been indicted.

Q. The same Joe Cole that Glasser told you was crazy?

A. Yes, sir.

The Witness: I had no further conversation with Mr. Glasser about that case.

(Whereupon Mr. McGreal read Exhibit 81 to the Jury, which is the report of Francis J. Campbell, investigator, Alcohol Tax Unit, on the Western Avenue still, together with the statements given by various witnesses to the said Francis J. Campbell, in connection therewith.)

801 Mr. Hess: At this point, if your Honor please, from the conclusion of reading this exhibit 81 by counsel for the Government, appearing on behalf of Louis Kaplan, I wish to make a motion that a juror be withdrawn and a mistrial declared on account of the inflammatory, prejudicial and incompetent preliminary matter referred to, Louis Kaplan in that report having nothing to do with the matter under inquiry here.

The Court: Motion denied. You may have an exception.

Mr. Poust: I desire to make the same motion on behalf of the defendant, Alfred E. Roth.

The Court: Your motion denied.

Mr. Poust: It may pertain to all the defendants?

The Court: Your motion denied.

Mr. Poust: I believe you told other counsel at the proper time you would give instructions concerning this?

The Court: Yes.

Mr. Poust: I would like the record to show the fact, if it is the fact, that your Honor inspected that exhibit, a part of it, before it was allowed to be read?

The Court: I did. I inspected, what is the name of the first exhibit, the number of that first exhibit?

Mr. Poust: 81.

The Court: 81. I read that number.

Mr. Poust: Before you allowed it to be read?

The Court: Yes.

Mr. Poust: I would like to move the Court at this time that your Honor now instructs the Jury that this Exhibit 81, which was just read to the Jury, is not directed towards the defendant Alfred E. Roth in any way, and is not to be considered by them against him.

The Court: I will say this for the time being that

those two exhibits and the contents thereof are competent evidence, and are so received at this time only against the defendant Glasser. At some further stage of the 802 proceedings I may advise you with reference to its competency as to the other defendants, but for the time being it will be admissible only against the defendant Glasser.

Mr. Stewart: By that remark, Your Honor does not mean to pass on the weight of it?

The Court: No.

Mr. Stewart: It is not in evidence against anybody.

The Court: No.

Mr. Stewart: It is for the Jury to say?

The Court: Yes.

Cross-Examination by Mr. Stewart.

Mr. Glasser and I were working together. I found that it should be withdrawn from the Grand Jury. That has happened before in my experience many times. If I think it will help the Government in its presentation of the case, I sometimes suggest to the Assistant in charge that it would be a good idea to withdraw it for the time being. I think it would be a pretty good idea to have corroboration of Cole if I could get it. When I went before the Grand Jury in that case I outlined the case to the Grand Jurors from the result of my investigation. Mr. Glasser was there, he did not in any way interfere with my making an outline. I told the Grand Jury to the best of my ability the nature of the case. I did that in order to help the Grand Jury in examining the witnesses. I know from my own experience that testimony like that is not governed by the rules that are in court. I have never given hearsay evidence before a Grand Jury. I told in a general way what people had been telling me about the case, wherever there was a signed affidavit. That is hearsay. I know I can testify what a defendant has told me. I did not have any statement of the defendant Kaplan. I did not have statements from the people that I called main defendants. Whether or not my report is of any value to the District Attorney, that is a matter on which he must use his own judgment. I would expect him to read the report in the 803 light of his experience and intelligence. During the time I was working in this Spring Grove case, I had a

large number of conferences with Mr. Glasser, he and I cooperated. We were both representing the Government to the best of our ability. When I had occasion to go in and consult with Mr. Glasser's superior concerning the case, Mr. Glasser said that he liked a case where he could go after the principals rather than just the minor people. I have worked with Mr. Glasser on other cases since that one. That was my first case with Mr. Glasser. I had no complaint to make about the cooperation I received. I was working in another district when the case broke. I have been an investigator about thirteen years. It is not within my province to start off a prosecution. If I receive information that a still was being operated, I would report it to my superior, and request that I continue the investigation. If my superior chose, he could just take my information and go about my own business. An investigator can raid any still he wants to, if, in his opinion, it would be detrimental to wait. I, as an investigator, could take a still without reporting it to my superior, and arrest anybody that was there.

I did not personally conduct Cole to the Grand Jury on any of the trips he made. I did not serve him with anything.

Q. Didn't you know that he was brought from some institution on one of those trips?

A. No, sir. He was—I visited him while he was over at the Henrotin Hospital for a couple of months. I never heard of him being brought in from any institution.

Q. When he was at the Henrotin, when was that with reference to his first Grand Jury trip?

A. He was not at the hospital on the first Grand Jury trip, on the second one. He was in the hospital then for two or three weeks under observation for a mastoid ear infection.

804 Q. Did he complain about having some bullets in him or something?

A. No, sir. I had heard that he had a bullet wound but it was only a splatter of some kind.

The Witness: I did not complete the investigation of the Hebron case. I was already assigned to the Spring Grove case. Some times we have two jacketed cases. This time, after the preliminary investigation was made, after the raid, arrest and seizure, I was relieved from further duty on that case, and that assignment was given to

another because I had plenty to do on the case I was assigned to at that time. Mr. Herrick, Mr. Yellowley's assistant, made the change.

Redirect Examination by Mr. Ward.

I took a statement, an affidavit from Peter Frett, this that you have just handed me is a typewritten copy of the statement made by Peter Frett. After I talked to Peter Frett I took that statement.

Q. In that statement did he tell you anything about Louis Kaplan?

Mr. Stewart: I object, your Honor.

Mr. Ward: You opened up the question of corroboration.

Mr. Stewart: I did not any such thing. I objected to that. That would be improper. If Mr. Ward will remember my question, I asked him if Mr. Glasser did not say concerning Cole that it would be a good idea to have corroboration of that.

Mr. Ward: Yes.

Mr. Stewart: And the witness' answer was he does not remember Mr. Glasser making that statement. That is the end of that. Then I asked the witness, I said, "You would like to get corroboration in any case where you had an accomplice." He said he would. And that is the extent of that. That does not give them a right to bring in anything that I cannot confront.

Examination by the Court.

Q. Did you discuss or bring to the attention of Mr. Glasser a copy of that statement of the original affidavit?

A. Mr. Glasser had a copy of the original affidavit. I had discussed Mr. Frett's affidavit as well as the affidavit of Alfred Slesur, Cecil Simms, Lester Urbanski, who corroborated Joe Cole at least in part or some parts of his testimony concerning Kaplan.

Q. If that other statement would correspond to the statement of the other witnesses—

A. That is true.

Q. You say now the statement of Peter W. Frett corresponded in detail with the statement of these other witnesses?

A. It corroborates in part.

Mr. Stewart: That is what I object to, he hasn't any right to say that.

The Court: Eliminate the word "corroborate"; and we want to know if the statements are alike.

The Witness: Not exactly, no, sir. There is more detail in Joe Cole's statement than any others.

Q. In Joe Cole's?

A. Yes, sir.

Q. Are there some statements in the Frett affidavit that are similar to the statements in the Cole affidavit?

A. Yes, sir, exactly.

The Court: I think that is sufficient.

(Witness excused.)

806 EDWARD DEWES, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is Edward Dewes, at the present time I am a prisoner in a Government institution at Milan, Michigan.

I know the defendant Louis Kaplan, Norton I. Kretske, Daniel Glasser, Tony Horton and Alfred E. Roth.

I have known Kaplan for eleven years, I met him at Northbrook, Illinois, when I was license investigator for the State of Illinois. I also met him over at his garage on Ogden and Kedzie in Chicago, about a month later. From that time I would from time to time stop at that garage.

I know a man named Stanley Slesur since 1935. I know a man named Ralph Boguch since 1936. I met Slesur at Kaplan's garage. I know Victor Raubunas since the latter part of '35, I met him at Kaplan's garage. I know Joe Cole, I met him in September of 1936 at his tavern. I know Louis Pregonzer, I met him in 1936.

I met Victor Raubunas in 1936 in Kaplan's garage, Kaplan and Slesur were there, nobody else. Kaplan at that time said he was looking for a place to rent for a still. I said I knew of a party in Fox Lake that could give us a place, they said they wanted to go out and meet those people. Kaplan and Raubunas said that. After that we went to Joe Cole's tavern, on the outskirts

of Fox Lake. About three miles from Spring Grove. When we got to the tavern, Slesur, Kaplan, Raubunas, Joe Cole, Pregonzer and myself were there. We arrived there around six or seven o'clock, that was in the month of September 1936. Cole and Pregonzer said they had a place that could be rented. We went over to a milk factory in Spring Grove, that is Kaplan, Raubunas and the rest of us. That is the place that is known as the Borden-Wieland plant.

Exhibits 97 to 112 are the pictures of the building, 807 the vats, the slaughter house, milk plant, the boilers and stills that were located at Spring Grove.

After the incident that I mentioned I went back to that building about a week later with Ralph Boguch, I helped to move in the still. Ralph Boguch and Louis Pregonzer also helped, it took about five weeks to set the plant in operation. We worked steady, probably for a month. After we first went to the building, we went back to Joe Cole's tavern. It was about eleven o'clock, after I got the stuff moved in there. When we rented the place it was understood we were to have protection. About four of us rented the place, Kaplan, Raubunas, Slesur and myself. The day we looked at the place, after we looked at the place, we had a conversation in Joe Cole's tavern, where Kaplan said he had protection, would cost \$350.00 a week. He said he had six people in the Federal Building. Did not have to worry about anything.

Q. Did he mention any names?

A. No, he did not.

The Witness: I hauled the vats in but I did not help put them up. I know Lincoln Rankin. Slesur brought Lincoln Rankin in. I do not recall the date. The still operated up to January 19, when it was raided. It produced 188 proof grain alcohol, the first week it produced 350 or 400 five gallon cans a day. The second week it was around 60 or 70 cans a day from then on. I was out there with Kaplan, Raubunas and Slesur at Joe Cole's tavern, when I learned the plant was raided. The four of us just drove around the plant, we did not stop, we saw a lot of cars around there and kept driving back to Joe Cole's tavern. We stayed there about an hour.

I did not get any money out of the operation of this still. I contributed 60 one hundred pounds bags of sugar, which is valued at \$5.00 a bag. I did not personally bring the sugar over to the plant, but I know it was de-

livered and used there. I don't know what Kaplan or Raubunas contributed.

808 In May 1937 I went out to the Higgins Road, west of Arlington Heights Road with Kaplan and Edward Farber, we went out to a greenhouse. It was vacant. It was not in operation. It was to be rented, could be rented.

(Thereupon, the following proceedings were had.)

Mr. Ward: I want to read this, I want to speak generally about that report, if I may, that report I did not finish reading. I finished reading one, but didn't start on the other.

The Court: I want to say again to the Jury, this report and the other report is containing evidence as being referred to only against the Defendant Glasser for the time being, not against the other defendants.

Mr. Ward: Now, Your Honor, in this report—

The Court: If you could just summarize it.

Mr. Ward: That is what I was going to do. I will sort of summarize it, because I expect you will be permitted to have it in your deliberation.

The report is what is known as a regular jacketed report from the Alcohol Tax Unit, and it is regarding a conspiracy case referring to the Spring Grove still.

Now, on the second page here, the names Louis Kaplan, Victor Raubunas, Edward Dewes, Stanley Slesur, Louis Pregenzer, Lincoln Rankin, the parties charged supposed to be implicated in that still. Then following is a repetition again of the history of the particular individuals involved in the still.

Then follows a chronological narrative report of the facts which came into the possession of the investigator by reason of their investigation. And the seizure, the size of the still and of the equipment which was found there to show the size of the operation, and an estimate value of the equipment.

809 Then a list of the witnesses with their addresses, and the sheets, or numbers of where their testimony appears in this report. By way of example, Peter Frett, Page 15 to 16. By turning to Page 15 and 16, any one in possession of this report could read and see what that witness would testify about.

Then following the list of witnesses there is in here, as the names appear, there is a summary of what each witness will testify if called before the Grand Jury, or

called before them, so that any person having it, and looking it over could familiarize himself with it, and know just exactly what evidence the Government would have in that particular case.

Then attached, again, we have the system followed by the Special Investigator in which they say at the end of their report—the evidence, available evidence, each defendant's name, that is, the implication, witness so and so will testify about, Kaplan, witness so and so will testify about Slesur, and so forth and so on. So that if you don't care to read the entire report, you could by looking at the evidence available against each defendant very quickly see the implications regarding each particular defendant.

And so at the end of the report we have a number of exhibits which are statements made by the different witnesses which are summarized in this report, so that anyone having the report could see that the particular party over his signature had stated that he would say such a thing if called upon in the Court. That is the sum and substance of this report. I might say that the document is possibly 75 or 80 pages long, and is what we call Case Number 4957-M, Spring Grove Still. (Exhibit 13.)

810 EDWARD DEWES, recalled as a witness on behalf of the Government, having been previously sworn, who examined and testified as follows:

Direct Examination by Mr. McGreal (Resumed).

Farber and Kaplan had rented that green-house for a still. They put a still in there. It was in there about three weeks. I helped set the vats up. That still operated about a week. In September 1937, I went to a filling station near Arlington Heights, Illinois. I know Leo Duthorn. After talking to Leo Duthorn I went over to the Beisner farm with him. I had a conversation with Duthorn then I went in and seen Victor Raubunas in Chicago at his home and had a conversation with him. After that conversation with Raubunas, I met Raubunas and we went out the same day. Raubunas looked the place over, at the Beisner farm. Farber was with us. I know Adam Widzes. He went out to the Beisner farm later on.

We erected a still on the Beisner farm. It produced fifty or sixty cans of moonshine a day, that is two hundred gallons a day. We started the still in October. I know Adam Molis, I met him at his home. Victor Raubunas and Edward Farber were with me. I had a conversation with him and then went to 120th and Ashland, and picked up a boiler and a still. Then I picked up the 811 boiler and still and a car, Adam Molis, Bill Bagdones,

Victor Raubunas, Edward Farber and Adam Widzes were with me. We took it to the Beisner farm. The car was used for hauling sugar. I don't know where the sugar was purchased from, Eddie Farber purchased it. I think there were seven or eight loads altogether. I met Neiss there. He worked around the plant, he operated a still. We got a new still from Adam Molis. It was ready to operate first of November, 1937. I know Eddie Farber's nephew, D'Vorak. I saw him on the farm there. I was on the Beisner farm when agents of the Alcohol Tax Unit raided it on November 18, 1937. I was over at Leo Duthorn's gas station about seven miles away at the time of the raid, I drove by the Beisner farm the next day and saw a big fire there, I didn't go in. After that I came to Chicago and saw Victor Raubunas at his home and had a conversation with him. After that, the next day, I met Victor Raubunas at Farber's home, 5400 W. Madison Street. That was on November 19, 1937. Victor Raubunas, Edward Farber and myself had a conversation. After that we went down to the Insurance Exchange Building lobby about ten o'clock in the morning and met Tony Horton, and we went into the bar room. We talked about bonds, to get the men out on bond that were in jail, and I didn't have any money for bonds, so Victor Raubunas, I think, made the arrangements to take the men out on bond. Farber had introduced me to Tony Horton and said Tony Horton would take care of things for us. I was talking to Tony, and he said he would find out what he could take care of the case for. But first of all, the men would have to be taken out on bond, that is, George Niess, Adam Widzes and Emil Beisner. I think there was a meet again for the next day at the same place, the same people were there, I think the men were taken out that day on bonds, and the next day, we talked about fixing the case. All four of us talked about it. Tony said

he could take care of the case for \$1200.00. We agreed it was too much money, we couldn't raise the money. I said I didn't have any money, Farber said he didn't have any money. Farber said he had somebody else in mind that would probably fix it cheaper. That is all the 812 conversation that I recall at that time.

After that conversation we went over to Norton Kretske's office at 7 S. Dearborn Street, I think it was on the 11th floor, Eddie Farber, Victor Raubunas, Adam Widzes, myself and Kretske were there. Eddie Farber suggested that we go over there. Horton was not there at the time that Farber suggested we go to Kretske's office. We asked Kretske how much he charged to take care of the case for us. I would say we all asked him. We agreed to pay him \$300.00 apiece. There were four of us to take care of the case, to fix the case. He said he could fix the case for \$1200.00. He said, "There would be no trouble, if Horton could take care of the case for \$1200.00, I could." We said, we didn't have that kind of money. He said he wouldn't do it any cheaper. I think Farber said he didn't have any money. At that time nothing was said about jail that I recall. The next day we came back to pay the money, the same four. I said I couldn't raise any money. I saw Raubunas give Kretske some money, I don't know how much. He did not give a receipt for it. I didn't give any money at that time.

On the 15th of May, 1938, I received a telephone call from Tony Horton, a message was left at my lingerie store at 6113 West Madison Street. After that I got in touch with Horton in the Insurance Exchange, he said Kretske wanted to see me. So I went over to Kretske's office with Horton and saw Kretske. He said the Grand Jury was meeting. If I could raise a hundred dollars I wouldn't be indicted for the Spring Grove still. Kretske said that. I asked Horton at that time what would happen, what it would cost me to make bond if I should get arrested on the Spring Grove case, and he said, "I will take care of you for \$50.00 on the bond." Nothing was said about the Arlington Heights case. On May 17, 1938 I went to Kretske's office and met Kretske and Tony Horton. I gave Kretske the hundred dollars. I did not get a receipt for it. I gave him the hundred dollars for a no bill. Well that is what it was told me that I would

be no billed before the Grand Jury. I wouldn't be indicted. That was all that was said at that time.

Q. Now was anything said at that time as to how that would be accomplished?

A. Kretske said he would send it over to the red-head in the Federal Building.

Q. Norton Kretske made that statement?

A. He made that statement to me, yes, sir.

Q. Do you know who he meant by the red-head?

A. Off hand, yes, sir.

Q. Who?

A. Daniel Glasser.

Q. The defendant here?

A. Yes, sir.

The Witness: In November, 1938, I learned that I was wanted in connection with the Arlington Heights case. I had a conversation with my mother and after that arranged to put up a bond. I think my mother went down to Norton Kretske's office, and he sent her over to the Federal Building to make bond for me. I had a conversation with Kretske at that time. I asked him how much he would take to take care of the case for me. He said "I will take \$275.00, and you won't go to jail."

Q. What else was said?

A. Well, I raised the \$275.00.

Q. What else was said at that time, when the figure \$275.00 was mentioned? Did he say how that would be accomplished?

A. He said he would give me a lawyer, that he wouldn't represent me, but that he would take care of it with his friend, the red-head.

Q. Was anything else said?

A. That is all I recall at that time.

Q. Was anything said about probation?

A. He said I would probably get a suspended sentence, or an hour in the custody of the marshal, or probation.

Q. That was in connection with the Arlington Heights case?

A. Yes, sir.

The Witness: I don't recall that he mentioned anybody else's name at that time. I know Max Hennig, I met him at Kretske's office, he is a bondsman. I had occasion to go over to the office of the Chicago Title and Trust Com-

pany and sign an application for a guaranty policy on my mother's property. I had a conversation with Kretske about that in his office. He said he would take care of—he would lay the money out for the policy until I got the money to pay for it. Later on I paid him for that \$160.00. I don't recall the date. It could be December 1, 1938. I raised the \$275.00 that I paid to Kretske by a loan from the Consumers Credit Company and on my life insurance policy.

Q. When did you pay it to him?

A. In the month of December.

Q. And for what purpose did you pay it to him?

A. To fix the case that I was implicated in.

Q. The Arlington Heights case?

A. Yes, sir.

Q. Now, did you have any conversation with Kretske when you paid him the money?

A. I did.

Q. What did he say to you, and what did you say, do you remember?

A. I had so many conversations with the man.

Q. Well, now, this was the time you paid him the \$275.00 in the Arlington Heights case. Just tell what the conversation was at that time?

A. I paid him the \$275.00 with the understanding that I was not going to jail.

815 Q. What was said?

A. He said that I didn't have to worry, that I wouldn't.

Q. What else was said? Have you exhausted your recollection about that conversation?

A. I think, I have had so many conversations.

Q. Well, to refresh your recollection, was anything said about heat on a certain case?

A. He said I should not talk about the Spring Grove case, how I got the no bill. He said they were bringing Stanley Slesur back in from the penitentiary. He said it looked bad for all of us.

Q. Kretske made that statement to you?

A. Yes, sir.

Q. Now, in his conversations with you did he refer at any time to the case that he handled when he was an assistant United States Attorney?

A. He said he took care of the Spring Grove case for

us. He said, "You didn't go to jail there." He said, "You won't go to jail on this case."

Q. And did he give you a reason why you wouldn't go to jail?

A. He told me that his friend was the Assistant Attorney over here, and I wouldn't have to worry about jail.

Q. In those conversations did he tell you why he left the office of the United States Attorney?

A. He said he quit under pressure.

Q. When did he tell you that?

A. In December, 1938.

Q. And where did he tell you that?

A. In his office.

Q. Now, tell this Court and Jury just what he said at that time and place?

A. He said he had to resign under pressure, and he said for his standing up, for resigning, he was to be able to take care of cases.

816 Q. Repeat that, what was that?

A. He said he resigned.

Mr. Stewart: There is nothing wrong with our hearing. We all heard it, Judge. We heard it in the opening statement, now we hear it here.

The Court: Let us hear it once more. Repeat the answer.

The Witness: A. He said he resigned under pressure over here, and for holding the bag he was to receive favors over here.

Q. Did he say from whom?

A. The Red Head.

Q. Who did you think he meant by the Red Head?

Mr. Callaghan: I object to that.

Mr. McGreal: I will withdraw that question.

The Witness: After I had that conversation with Kretske, I met Emil Beisner. I brought Beisner with me when I came in on the day of the trial. I had a conversation with Kretske about Beisner in December 1938. Beisner wanted to meet Kretske, and he wanted to be taken care of the same as I was. He asked me how much money I was paying to be taken care of by Norton Kretske for the fix. Beisner talked to Kretske. Asked him how much he would charge him to take care of his case for him. I was there. Kretske said he would take care of it for the same price he had taken care of Eddie's. Beisner said it was O. K. with him. He would pay the money in, and asked

Norty what he would do about his farm, he didn't want to lose his farm, I didn't have a conversation with Kretske about Beisner before he got out on bond.

On December 27th, 1938 I came to this building to go to court and entered a plea of not guilty. Emil Beisner and Alfred Roth who was my lawyer was with me, I didn't retain Roth. I never paid him any money to represent me. The case was continued. I asked for two continuances. I was over in Mr. Roth's office the middle part of 1939. I didn't hear him making a telephone call.

817 Q. At any time when you were in Mr. Roth's office, did you hear him making a telephone call?

A. No, I didn't.

Q. At any time when you were in Mr. Roth's office, did you hear him make a telephone call?

A. No, sir.

Q. At any time did you hear him talk to Mr. Kretske on the telephone?

Mr. Poust: I object to that, he said twice he didn't and he is their witness.

The Court: He may refresh his memory. What was your answer to the last question?

A. He called Norton Kretske in the Federal Building here.

The Witness: I was with him when he was making the call in the lobby. I told Mr. Roth that I wanted to get out of the case. That I wanted to go to bat that day, and get it through with. He said, "I don't want to send you to jail, or see you go to jail, I will call up Norty and see if possible to go to trial." I didn't hear all the conversation on the telephone. He told Kretske that I was hot, and I wanted to get the case over with, one way or the other. And he said to me, before he made the call—he asked me for money that day, when I came into the building first. I told him I had paid Norton Kretske for the fix, and he said he was not interested in what I paid Norton for the fix. He was fighting the case on the merits of it. All I heard him say was that he asked Norty if it was alright for him to go to trial that day.

Q. What else was said?

A. That is all I heard.

Q. Was anything said about Glasser?

Mr. Stewart: Well, Your Honor, Mr. McGreal might as well hand him the statement and let him read it, that is all we are getting here.

818 The Court: Oh, no.

Mr. McGreal: I will if you will agree to it.

The Court: He can refresh his memory.

The Witness: The case was continued and I went over to Kretske's office from here, and I asked him why I couldn't get out of the case. I saw Kretske at his office, he said that the red-head wanted more money, that I was still in the business. I told him to call up the county building, he could find out I was employed there, I was not in any racket. I walked out of Kretske's office into the hall. Kretske said to me "You never paid any money to Glauser. You paid me the money. I will stand up, I will go to jail. You never dealt with him." I told him, "I think it is a racket. You have taken my dough and I am going to jail," which I did. He said Slesur was coming in from the penitentiary and he said if he would talk we would all go to jail, and he would go to jail.

I was arrested on April 21, 1939. The next day I went to see Kretske. It was twelve o'clock, and I think he was busy when I came there to his office, I didn't talk to him much, probably a few words, said I would see him later. I seen him the following week, at his office. Max Hennig was there, I don't recall what was said. I was tried on the Arlington Heights case in June, 1939, my lawyer was Norton Kretske, Alfred Roth appeared for me in court as my lawyer, Norton Kretske appeared for the farmer, Beisner. Mr. Martin Ward represented the United States. I never paid Alfred E. Roth any money to represent me. I was in his office twice. I was in Kretske's office maybe a hundred times, or more. Roth asked me for money twice. I told him I paid Norton Kretske. He said he was not interested in what I paid for the fix, that he was fighting the case on the merits, but I told him I didn't have any money. Kretske was never present when I was arguing with Roth about money. I was convicted in that case and am now serving time in connection with it. I

819 told Kretske I wanted to get the case over with. That was in March or April of 1939. I told Kretske I read in the paper where Glauser was resigning as prosecutor, was opening up his own law office, and I wanted to get this case over with before he was out of the building. He said they took the alcohol cases away from his friend, he couldn't do anything for me.

Cross-Examination by Mr. Stewart.

I first met Horton in the Insurance Exchange Building. We were over there interested in two things. One was the getting of bonds, and the other was in purchasing a fix somewhere. They probably mentioned the amount of the bond fixed for the farmer, Widzes, Farber and Neiss. The bond premium was 10%, if it was 2% I couldn't pay it. I couldn't pay. So I was not interested much in what the amount was. During that conversation Horton said he could fix the case for \$1200.00. And some of us there stated that we thought that was too much money. And we tried to bring him down on the price. And then Farber said he knew someone that could fix it cheaper. So it was at Farber's suggestion that we went over to Kretske's office, and we gathered from that, that that is what Farber meant, that he could get a fix or could go and fix it cheaper, and so something was said there about Horton's price for fixing it up with Kretske. Kretske said that if Horton could fix it for the \$1200.00 he could fix it for the \$1200.00. To sum it up, we boys were kind of shopping around for the fix and were trying to get a fix for the lowest price we could get it. We had one offer from Horton, then Farber said he knew a place where it could be done cheaper, and we went over there to see what the other fellow could do it for. When the other fellow discovered Horton had made a price of \$1200.00, he made that his price. I didn't pay any money out at that time. Raubunas paid Kretske \$300.00 at that time. 820 I saw him pay it at Kretske's office. That is the only money I saw Raubunas pay. There was money paid to Horton over in the Insurance Exchange Building for bond. Raubunas handed him the money, I can't say how much, so I saw Raubunas hand out money twice in that connection. I don't know what amount he handed Horton but I know it was for bonds. As far as Horton's matter of fixing the case, that fell through, there was no money paid Horton for the fix there. Because we were going to go around shopping and see Eddie Farber's man.

I was not interested in any way in the operation of the still on Western avenue. I was not there at all. I don't know anything about Western avenue. I have heard about it.

I did work around the Arlington Heights still. I helped set up the vats, with Victor Raubunas, Edward Farber,

George Niess, Adam Widzes and Farber's nephew. I have named them all. I worked there about a month, setting it up. Kap'an was not interested in the Arlington Heights case still, on the Beisner farm. Kaplan was in on the green-house. There was no agreement made there for protection. None at all. I did not ever set a still up in the green house, or have anything to do with that. I saw the still in the green-house, Eddie Farber, myself and three other fellows I don't know set up three vats. That still operated a week. We couldn't make any headway with it, and took the place out. Tore it down. The still didn't seem to be able to work, then we moved it to the Beisner farm, where Raubunas, Farber, Widzes and Eddie the mechanic and myself set it up.

Q. Was anything said about protecting, or getting protection, in that venture?

A. We had no protection, nothing was said about it.

Q. And was Kaplan interested as a partner?

A. No, sir.

Q. Was Farber interested as a partner?

A. Yes, sir.

821 Q. And didn't Farber say anything to you about having the place protected?

A. No, sir.

The Witness: We were just going to sneak it. Just going to run it and take a chance at it. Run it without protection. I know that, because I was interested in it, and was at conferences where all of the people were there, that is right.

I have named all the stills that I have been interested in, all the stills that I have done any work on. To my knowledge at the green-house when we had these stills set up, we were not depending on local protection to be furnished by the sheriff. I don't know if it was at the suggestion of the sheriff that the still was moved to what they thought was a better location. I heard the thing discussed, that is local protection. I don't know of any local protection.

I used to be a constable in Cook County at one time. I paid money to Kretske to fix my case when I had trouble at Spring Grove, Illinois. And then later on I got in trouble at the Beisner farm. I was indicted for that, and paid Kretske some more money.

Finally I got a little put out at Kretske, I was kind of mad at him, he didn't deliver. I told him it was a racket to me. That is my feeling on the subject now, because I

having been a policeman, know that is done. People pretend they get a fix and take money away from you, and then they haven't got it. That is what I thought about Kretske. That is what I meant when I said it was a racket. He didn't return the money he got to me. That is what I meant when I accused him of conducting a racket. That he was just pretending to be able to protect me, and took my money away, and after he took my money away from me, he couldn't do anything, because he couldn't. I knew after Mr. Ward was in the case I was not being furnished with protection, before that I knew I would be 822 protected, from what Mr. Kretske told me. I mean I paid money to be protected. As time wore on and I found myself in more and more trouble, I didn't get madder at Kretske. I did not get mad at him when I told him it was a racket. He is still my lawyer, he is still my friend, yes, and no. I am in jail, I am doing my own time. I have got no grievance against anybody now.

I don't feel friendly toward Mr. Kretske. I feel unfriendly to him. That is because I thought he took my money away from me in that racket. I don't know from my experience as a former policeman and my activities in these stills, that you can't conduct a still business for any length of time if you don't have protection. I don't know that. I have no idea how long it takes a law enforcing officer to find a still where there is no protection. It is a fact that I at one time had an interest in the Western Avenue and Spring Grove stills. I was not interested in a still at Shamberg, Illinois. I was not interested in a still at Lake Geneva with Slesur, and McMinus was killed there. I was not interested in that still. I can't say off-hand if Slesur had an interest in that still. I know Slesur, and I know he is supposed to come here as a witness, but I can't say whether he was interested in that Lake Geneva still or not. I was not interested in the still at Kenosha county. I was interested in the Beisner farm. I was not interested in a still at Ottawa. I have got no money from them stills, if I was a partner in all of them stills, I don't know about it.

I have a two year sentence over my head now on the Beisner farm case. I have another indictment over my head in the Spring Grove case. That is the case I was supposed to have fixed, and I know the penalty is a penitentiary sentence if I am convicted, and I am now telling the Court and Jury that I was a partner in that still.

There is nothing I can do if the Government sends me away on that. I have a fear that they might. I did not express that fear over at the jail, in the presence of some of the witnesses. I did not say to the prisoner that there were three more cases. There is nothing else I could do 823 but go to trial. Nothing has been promised me for this testimony. I hope that will happen, that they give me something for this testimony. I hope to get a little consideration.

I made a statement to the Government. I made one statement to the Government. I signed statements to the Government. I signed one shortly after I was convicted, then I was held here in jail, and I was brought back, and gave them some more information, then I signed another statement.

Exhibit 114 dated July 27, 1939 is the statement that bears my signature and is initialed on each page. Then on October 20 I signed Exhibit #115 which is my statement of that day. Exhibit 114 has five pages and 115 has ten pages. In the first statement I didn't say anything about being mixed up with the greenhouse. There is nothing in the first statement about Mr. Roth phoning Mr. Kretske. The reason I haven't got that in the first statement was I made that statement after I received a two year sentence, and I had the family on the outside, I was wondering what was going to happen to them. I didn't think of anything pertaining to the case. My thoughts were on the outside at the time I made that statement. I didn't feel fully possessed of my faculties, I was nervous, I didn't cover the thing as fully as I did later. It is not that I held out something that I was not ready to tell about, things in another still. That has nothing to do with it. I know of Alfred Schmeltzer. I did not go to him about two months after the distillery was seized and tell him that I understood he had helped to finger Joe Cole, and that he had better not identify any of the rest of them. I never seen him after the raid. I did not see any other witnesses. I did not threaten any of the other witnesses. If the agent said I did that is false. When I met Kaplan I was a licensed automobile investigator for the State of Illinois, that was before I was a constable. Kaplan was in the automobile business, I did not know him to be in any other business. I did not know him to be a bootlegger. I first learned he had some-

thing to do with bootlegging the latter part of 1935.
824 I was a constable. I did not do him any favors along the line of his bootlegging. I didn't take money for that. I didn't go to work for him after I finished as a constable. I didn't go to him for a job at no time. He gave me a piece of his business, that is how I got in business with him. He gave me a piece of Spring Grove, because I was a good friend of his. I had met him in 1929 and stopped in there maybe once, twice or three times a month, and worked up a friendship with him. I shot and killed a man for him when he was being kidnapped in 1935. I didn't know he was in the bootlegging business, I was not in the bootlegging business with him. I killed a man, shot him and killed him. I was a constable then, so I had a license to carry my gun. I did not shoot and kill a man to protect a bootlegger, I was not in the alcohol business at the time of the shooting. I wouldn't say the shooting was my territory. It was in the county, in the City of Chicago. Constables are authorized to work in any part of the county. I came to the garage to visit Kaplan. A constable is on duty from the time he is elected until the time he is not a constable any more. I think everything he does is done in the line of his duty, so that was done in the line of my duty as a constable. That is just about as true as everything else I have told you here about people. There were three city policemen there, at the time I was there, that night in Kaplan's garage, at the time they attempted to kidnap him. I happened to be there visiting the man. The man that was killed is named Panna. I studied a little law to qualify myself for the constable's job.

Q. Don't you know that when people are engaged in some unlawful enterprises like a bootlegging, or something like that, and a man is killed, that is no legal defense at all.

A. I wasn't in the bootlegging business.

Q. But you say you were not in the bootlegging business—

Mr. McGreal: I object, to that statement made by Mr. Stewart.

The Court: He said he was constable, and was not in the bootlegging business at that time, an officer of the law.

825 Mr. Stewart: Q. Now, in this short statement you made on July 27, there is nothing in there about

Kretske saying to you "the Red Head wants more money, if you are still in the business," there is nothing like that in there either.

A. What statement is that?

Q. Well, this is July 27. This is the first short statement you gave the Government.

A. I didn't make a statement of that kind.

Q. Well, you made a statement, didn't you?

A. I made a statement, but I didn't have it in there.

Q. And the reason that you didn't have it in there was because it is a lie, and you didn't think of it when you gave them the statement of the 27th, that is the reason, isn't it?

A. It is no lie.

Q. And you have a lot of time to think up things now, you can add to your statement that you made in July, the 27th, that you think will help these people on trial, that is a fact, isn't it?

A. It is not. I didn't think a friend like Mr. Kretske would do that to me.

Q. Well, that does not explain why you didn't tell them on July 27th about what I just asked you, does it?

A. I paid him \$100.00 for a No Bill, the money he asked me for, and I paid him.

Q. Here is a statement I am talking about. In your testimony here, right here, just a little while ago, you stated the Red Head wanted more money, Kretske told you that. If you were still in the liquor business, and there is nothing to that effect in your statement of July 27th, is there? Now, do you want to give the Judge and the Jury some explanation from that standpoint about why that piece of evidence is not in your statement of July 27th?

A. Well, when I received a two year sentence I thought of my people on the outside, I was figuring, I was going to receive a sentence that day. My mind just didn't function, that is all.

826 Q. Did they take the statement of July 27, 1939 on the same day you received the sentence?

A. No, sir.

Q. When did you receive the sentence?

A. July 19th.

Q. So from July 19 to July 27 you were in a daze?

A. Yes, sir.

Q. And when you gave the Government this statement of July 27th, you were in a daze?

A. Yes, sir.

The Court: By that you mean you were worrying about your family and about your investment?

A. Yes, Your Honor.

Q. You were thinking about the troubles of others?

A. I was wondering how I was going to make the two years. I wasn't thinking of anything else.

The Witness: Norton Kretske told me that Stanley Slesur was to be brought back from the penitentiary. Nobody else told me that. I have never talked to a Government agent but one, that is Mr. Bailey. I talked to him three or four times. Mr. Devereux talked to me. Bailey talked to me three or four times, two of those times was when I was making two different statements, so there was only one time outside of the time of the making of these statements that Mr. Bailey talked to me. I talked to Mr. Ward when I came in from Leavenworth, once for two or three minutes. I talked to Mr. McGreal.

Cross-Examination by Mr. Balaban.

I was brought back from Leavenworth and lodged in the county jail September 6th or 7th, 1939. Nobody representing the Government had been to see me at Leavenworth prior to my leaving there. I didn't talk to any agents. When I returned from Leavenworth Stanley Slesur Victor Raubunas and a fellow by the name of Paul came with me. We were all in the same train to 827 gether. We all went down to the penitentiary together on a prison train. We were in the same institution there for about two months. I was in the county jail after that before I left for Milan about seven or eight weeks, and during that time we were brought to the Federal Building about twenty times, and during those twenty times we came to the Marshal's office from the jail in the marshal's wagon. Victor Raubunas was with me. We were brought down at nine and returned at five each day. We never left the marshal's office, Mr. Devereux and Mr. Bailey interviewed us, I would say eight or ten times, so there were twelve occasions when we came down here that nobody talked to us. I was in the same cell with Raubunas. Stanley Slesur was not here at that time. On October 20th, 1939, the day I made that

statement I saw Victor Raubunas. The statement was signed in the marshal's office. I did not see Victor Raubunas sign the statement. He was in the marshal's office that day and was in the same cell with me. I didn't ask him if he signed any statement that day. I was in the same bull-pen at the County jail with Victor Raubunas. In the same bull-pen in the County jail with me now are Victor Raubunas, Stanley Slesur, a fellow by the name of Paul and one Wroblewski. He did not come up in the prison train with me, he had not been over to Milan. I know I met Tony Horton at the Insurance Exchange Building for the first time. I can't say that the bond was \$3,000.00 each and the premium was \$300.00.

Q. Now, are you in a Federal Penitentiary at the present time?

A. Yes, sir.

The Court: He testified to that three or four times.

Mr. Balaban: I have not asked him.

The Court: That does not make any difference. I don't want you to cover what has been covered by others.

Mr. Balaban: I don't intend to.

Q. You are at Milan Michigan now?

A. Yes, sir.

828 Q. And when you were sentenced you were sentenced to two years in the penitentiary?

Mr. Ward: I object to that, as immaterial, the Attorney General of the United States is the one who has custody of the prisoners. We have nothing to do with that.

The Court: Objection sustained. They are both Federal Penitentiaries.

Mr. Balaban: Isn't it a fact you are in what is known as a Reformatory, now?

Mr. Ward: I object.

The Court: Objection overruled. You are in the Milan Penitentiary now?

A. Yes, sir.

The Witness: I never talked to Raubunas or Slesur about what I would testify here, either during the time I was on the train with them, in quarantine with them, or in the county jail with them. I didn't mention anything about my testimony. I knew I was coming to testify before the Grand Jury against these defendants but I didn't ask Raubunas what he was coming for, and he didn't ask me. He never mentioned anything to me in all this time and I didn't mention anything to him. I can't say if he

knew I made a statement. I didn't know he did. We did not discuss with each other the fact that we had both made statements on the same day. He never told me what he had done. We never spoke of anything pertaining to this case or testimony. There were twenty or thirty other prisoners in the same bull-pen with us. I didn't talk with any of them.

Cross-Examination by Mr. Stewart.

I don't have any sort of written agreement or contract with the Government, I was not represented by a lawyer since my conviction. There has been no sort of writing made for me concerning this testimony I am giving. A lawyer named Mr. Kuiney, a personal friend of mine, I have talked to since I was convicted. I talked to him 829 when the Spring Grove case was called.

Redirect Examination by Mr. Ward.

I had no connection with the Western avenue still. I know Louis Kaplan is indicted in that Spring Grove still with me, and that case is pending, that indictment was returned after Mr. Glasser left the District Attorney's office.

(Witness excused.)

PAUL SVEC, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

I am committed in the Federal Institution under the name of John Sebo, my real name is Paul Svec, I am 26 years old. I know the defendants Kretske, Glasser and Roth. I am now a prisoner at Leavenworth Penitentiary. I was committed on April 15, 1939.

The first time I was ever arrested was in 1936. I came in at that time with my lawyer, Mr. Walter Duft, and gave myself up. It was case #29601, there were a number of defendants in it. I was charged with having some connection with a still at 4263 Elston Avenue. When I came up for trial I saw Mr. Daniel Glasser for the first

time in my life, in court. I plead guilty and was sentenced to serve one hour in the custody of the marshal.

I was arrested under the name of John Sebo on indictment #30603, that indictment was returned October 21, 1937. I believe I was arrested on that case about the 3rd of August, 1937. At that time I was an automobile mechanic for four years or so. I know a man named Albert Yarrio. He has a nick-name, Sheenie Albert. I had occasion to meet him in this gas station where I was working, he used to stop for gasoline, and I got to know he had a few things going on, illegitimate enterprises, booking places, and things. Mr. Glasser was the Assistant in charge of the case at the time of my conviction. I 830 was sentenced to two years and \$500.00 fine on two counts that I was charged with violating. Mr. Roth represented me on my appeal, which I lost. I received that sentence on October 4, 1938. On December 9, 1938 I was arrested in the vicinity of 900 N. Orleans Street, I don't know the name of the agent. I was arrested about three or four o'clock in the afternoon. I was driving an automobile at that time. I passed by 713 N. Wells Street. I did not know what was in the premises. I don't remember if I drove around the block in my car. I did not go back near there. I was arrested about four blocks away. I was followed in another car. I found out it was the agents of the Alcohol Tax Unit. I don't know Louis Bernstein. I have heard of Maple. I don't know there was a still at 713 N. Wells Street. I don't know that was a place that was being used in connection with illicit alcohol. I was not going to 713 N. Wells at that time. I was just driving around that vicinity. There was a conversation when I was arrested. After that conversation the agents stopped in front of this building on Wells Street. We stayed there about two or three minutes. They had some conversation there about taking me down to the new post-office, and it was agreed between them. That was close to five o'clock. I don't know the floor they took me to in the new post-office. It is where the agents of the alcohol tax unit usually take the prisoner. When I got there agent Harks was there. That night I was taken to the Des Plaines Street station for the night. The next morning I was taken to Mr. Glasser's office on the 8th floor of this building. Upon entering the office, Mr. Glasser was told by agent Calhoun and this other fellow that I was the prisoner by the name of Paul Svec, and he said "Would

you mind stepping out of the office? I would like to talk to Paul alone." And I guess his secretary heard that too, and she stepped out of her office. Mr. Glasser and myself, we remained in the office alone, and tried to get together. We had a conversation. Mr. Glasser asked me he says, "What was the idea of you calling me last night?" He asked me that in a pretty loud tone. He

said, "Do you always call me on the telephone, or look 831 for me?" I said, "No, sir." He said, "Just what made you call me?" So I said, "Mr. Harks, that is the agent in the new post-office, and this other fellow"—I wish you would tell me what his name is, I believe I told you once before.

Q. You referred to him as the other fellow. Kral, is that him?

A. That is not him. Might be. Calmel—

Q. Is it Caserly?

A. That might be his name, big, heavy-set fellow, I said, "They asked me to call you." So—I am trying to refresh my memory, see. So he says—I like to tell the story the way it happened.

The Court: Tell it in your own words.

A. He asked me, or he said, "What is the idea of your calling me last night?" So I told him these agents asked me to call him on the 'phone. He said, "What do you think you would gain by that?" I said, "I figured I would get a break." He knew I was out on that appeal bond at the time I had the case in the Appellate Court pending, so I was afraid my chances with a verdict of Not Guilty coming from the Appellate Court would be ruined by this arrest. So I told Mr. Glasser that. And he told me, I guess he said that had nothing to do with that Appeal case, this arrest. He asked me "what were you arrested for?" So I told him what it was for, I was picked up on 900 North Orleans Street, and he said that they had some kind of charge against me, something about a still, and so he asked me if I had anything to do with that still. I said, "No, sir, I didn't." So he asked me—I don't remember if he did ask me if I knew these other two fellows you mentioned by name. He may have, I don't remember. So I told him what took place in the New Post Office the day I was arrested, how I happened to call him. He said, "Would you be willing to sign a statement to that effect?" I said, "Yes, sir." Just before this, he asked me, he said, "Do you know Albert

Yarrio ever gave me any money to fix a case?" I said, "No sir." He said, "Did you ever try to fix a case with me?" I told him, "No, sir." He said, "Did you ever try to contact me anywhere outside the building, or even in the building, pertaining to fixing a case?" I said, "No, sir." That is when he asked me about the statement, would I be willing to sign a statement to that effect. I said, "Yes, sir, I would."

Q. Was that all of the conversation?

A. I guess that is about all.

Direct Examination (Continued) by Mr. Ward.

The Witness: My conviction was affirmed by the Circuit Court of Appeals the latter part of March, 1939. At my hearing before Commissioner Walker some time in the month of December, 1938, Mr. Roth, the defendant, was my lawyer. I never hired him. Albert Yarrio hired him for me. I had a conversation with Mr. Roth after I had this conversation in Glasser's office. During the time my hearing was pending before the Commissioner, I had occasion to be at Mr. Roth's office and a conversation was had by him and myself in regard to this here little conversation I had with Mr. Glasser. Mr. Roth patted me on the back and said, "You done alright in Mr. Glasser's office that morning when the two of us were in there together." He said I stood up O.K. I did not ask him how he knew that. After that I had my Commissioner's hearing. The two men mentioned previously by the Assistant prosecutor on your left, they were bound over to the Grand Jury, and I was thrown out for the reason that there was not enough evidence to hold me. I was discharged.

Agent Kral, I believe, is the man that arrested me, that is the man I had a conversation with before I was taken to the Alcohol Tax Unit. In December of 1938 I did not know Norton Kretske's telephone number. I never knew his telephone number at all. The only time I ever called Mr. Kretske was right from the new post-office building the afternoon of my arrest, after the agent there took me to the new post-office building. I don't believe I had any further conversation with Mr. Roth regarding the conversation that I had in Mr. Glasser's office. Upon entering Mr. Glasser's office immediately to the right is a

desk occupied by Mr. Glasser. It is about four or five 833 feet away from the window. There was a door leading to a closet there. At one time in talking to Mr. Roth, it was later on after this hearing before the Commissioner, he said, "You know there was an agent planted in that closet listening to what you and Mr. Glasser had to say." I said I did not know that. I did not ask him how he found that out. When I was listening to Mr. Glasser he talked in a loud tone of voice. The door where you enter into Mr. Glasser's office was closed. Mr. Ritter of the Alcohol Tax Unit was not one of the men that brought me over. When I got through they were still waiting. As far as I know, I don't know whether they remained there all the time, but they were there when I got outside. This conversation lasted about ten or fifteen minutes. I was sitting at the desk and Mr. Glasser was sitting at the other side of the desk, about three feet away. He talked to me a little louder than you are talking now. He made no gestures at all. I was released on bond when I was brought before the Commissioner. I believe it was Tony Horton that signed my bond. I believe that because I recall when I went out on bond, I had to sign some papers and he was right at my elbow. I did not pay Horton for the bond. My mother paid for the bond. After I got out on bond I went home alone. I was in front of the Commissioner two times. When I was arrested in August, 1937, I had dealings with Horton at that time, that is on the present case I am serving sentence on now. He signed my bond at that time, right up there in the Commissioner's office. Albert Yarrio paid for that bond. I left the building with Tony Horton in his Lincoln Zephyr automobile. He drove in the vicinity of the Maxwell Street police station, and picked up Mr. Kretske. From there we drove—

Q. Just pause a moment. When you picked up Mr. Kretske, did any conversation take place between you, Kretske and Horton?

A. No,—maybe a sign of recognition.

Q. What was said?

A. There was nothing said because it was a short drive.

Q. You say a sign of recognition? What do you mean by that?

834 A. Just a nod of the head, "How are you, Paul," that is all.

Q. Who said that?

A. Mr. Kretske.

Q. Did you know Mr. Kretske before that time.

A. No, I did not. I knew him because of that case that I got one hour in the building.

Q. Yes?

A. I had occasion to see him in the building at my trial. He was the assistant prosecutor.

Q. With Mr. Glasser?

A. With Mr. Glasser.

Q. Where did you go from there?

A. We drove along a distance, I should judge about eight blocks down to Polk and Carpenter streets. There is a church on the northeast corner and we parked in front of the church.

Q. Did you go to church?

A. No.

Q. What did you do?

A. As the car pulled up to the curb, Albert Yarrío was standing in front of the barber shop a little way down the street. He could distinguish the automobile that pulled up.

Q. What did he do?

A. He walked up to the car.

Q. You saw him walk to the car, did you?

A. That is right.

Q. Did he have some conversation with you?

A. Yes, he got into the car.

Q. And was Mr. Kretske present?

A. Yes, Mr. Kretske.

Q. And Horton?

A. And Horton.

Q. What was said?

835 A. Well, Mr. Yarrío and Mr. Kretske had a conversation there. I did not pay much attention to it, but the idea of it was that somebody patted me on the back, I don't know whether it was Albert or Mr. Kretske or Mr. Horton, but they said, "Don't worry about anything, kid, you will be all right."

Q. You were one of Yarrío's boys?

A. Not Yarrío's boys. I never worked for Yarrío, if that is what you mean.

Q. But you knew him?

A. I know him, yes, sir.

Q. Did he have some nickname that he was called?

A. Yes, Sheeney Albert.

Q. How long did you remain at that particular spot?

A. Oh, maybe ten or fifteen minutes.

Q. Did you go some place after that?

A. Yes, I believe I went in the barber shop where Albert hangs around.

Q. Look at Numbers 116 and 117, and tell us if that is a picture of the barber shop you mentioned.

A. That is correct, that is the barber shop.

Q. Do you know the number of that place?

A. 1062 Polk Street.

Q. There are two different views, is that it?

A. That is right.

Q. Had you ever been to that barber shop before that day?

A. Oh, yes, I had been there right along.

Q. How long had you been frequenting that barber shop?

A. Maybe six months prior to this arrest.

Q. Are you able to tell us any persons you saw in that barber shop, say the last few years preceding that day?

A. I seen many fellows there.

Q. Can you name some of them?

A. The fellows that owned the place.

836 Q. Yes. Anyone else?

A. Yes, different people.

Q. Well, name a few.

A. Nick Girardi.

Q. Yes, who else?

A. Other fellows I know by their first name.

Q. How long had you known them by their first name?

A. There are fellows I know by their first name to this day yet.

Q. Do you know what business they were in?

A. I wouldn't say I know what business every one was in; maybe a few, gamblers and different fellows.

Q. And bootleggers?

A. I wouldn't know whether they were bootleggers, unless the rumor was that they might be bootleggers, like if somebody told me.

The Court: Have these photographs been offered?

Mr. Ward: I was reserving my offer, your Honor.

The Court: I thought if it would help the jury, these pictures might go in.

Mr. Ward: I think so, too, but I did not want to stop

the examination. Sometimes the jury gets to examining a document and don't pay attention to the witness. I will offer them at this time.

The Court: They may be received.

(Whereupon the said photographs were admitted in evidence, as EXHIBITS 116 AND 117.)

Mr. Ward: Q. You mentioned Nick Girardi. I will show you Exhibit No. 119 and ask you if that is his picture.

A. Yes, that is him.

Q. And No. 118, is that Albert Yarrio, known as Sheeney Albert?

A. Yes, sir, that is him.

Mr. Ward: At this time I will reserve the offer.

Q. Did you ever see Daniel Glasser at any time or place outside of the time that you say you saw him in the United States Attorney's office?

837 A. I have seen him on two occasions drive past the barber shop and toot his horn and turn the corner immediately to the street west of the barber shop.

Q. And after he tooted his horn, what did you observe with reference to the barber shop?

A. This Albert Yarrio was in the barber shop, and when he heard the horn blow, he looked out the window and observed a green Buick rolling by. He said, "That is Red, I guess I have to go see him. He left the barber shop in the same direction the car went. He walked over in that direction.

Q. And who was that, you say?

A. Albert Yarrio.

Q. Did you see him return?

A. Yes, I did.

Q. How long after did he return?

A. Oh, five or ten minutes.

Q. Now, can you give us some idea of when that occurred?

A. It must have occurred some time after my arrest in August, 1937.

Q. That was one occasion. Do you remember the other?

A. Maybe a few months went by. I can't give you no idea whether it was June, or February, or what. It was the time when he had the green Buick. It was the same car.

Q. The green Buick?

A. With white wall tires.

Q. What model car was it?

A. A 1936 Buick. I understand that was the car Albert sold him. Albert was also a salesman for the Buick.

Q. Now, in talking, did you have any further conversation with Mr. Glasser that you have not related here?

A. No, outside of what I related, I never had any other conversation with Mr. Glasser.

838 The Witness: The only one I ever talked to about my appeal was my attorney, Mr. Roth. I did not have any conversation with Mr. Roth with reference to my appeal, that I have not mentioned here. I paid Mr. Roth money for my appeal, different amounts of money, from one to two hundred at a time. It was money that Albert gave me to pay him that. I mean Yarrío. I recall the day I was discharged from the Commissioner. It was before Christmas. I don't recall Mr. Glasser saying anything before the Commissioner. He was representing the Government at that time in my case. I cannot recall what he said. He did not say anything to me. I was there with my lawyer, Mr. Roth. He did not say anything that I recall. I guess there was something said about this statement that Mr. Glasser asked me to sign in his office. Mr. Roth said something about that. He said "I am not going to have you sign any statements, see." In other words, a statement for Mr. Glasser. That was the talk between Mr. Roth and myself, it was in regard to the statement which Mr. Glasser asked me to sign previously in his office. That is what it was in regard to. That conversation with Mr. Roth was **after** my discharge. It must have been a period of ten days.

Cross-Examination by Mr. Stewart.

I was not asked the conversation that I had with Mr. Glasser on the phone yet. When I talked to him on the phone he was at a hotel down-town. I was in the New Post-Office building with agents Harks and Casserly. When Mr. Glasser came on to the phone, I addressed him as Dan. I said, "Hello, is this Dan"? He said, "Yes, who is this?" I said, "This is Paul Svec." He said, "What is it?" I said, "I am arrested by the Alcohol Tax Unit agents, Mr. Harks and Mr. Casserly. They have me in the new Post Office downtown," not downtown, but where

it is located. He said, "What is the idea of calling me?" I said, "I am calling you because they told me to call you." He said, "Where did you get my phone number?" I said, "They furnished me with it," meaning Mr. Harks and Mr. Casserly. He said, "What is the idea of calling me?" I said, "I am just calling you because they told me if I talk to you and go past, they will let me go." Mr. Glasser said, "If they let you go I will throw them in the can with you." That was the end of the conversation.

I have told all the conversation on the phone now, as near as I remember. I started out saying "Dan, this is Paul Svec. I had gone in front of you one time." He said, "Oh, yes, I remember." He said, "You mean the fellow I convicted, what do you want?" I didn't say anything about money, that is I want to give the agents some money, I had no conversations about money with Mr. Glasser.

The next day, after I was locked up over night, the same agents that locked me up, brought me over here to Glasser's office. They stayed outside.

The conversation I had with Mr. Glasser in his office, Mr. Glasser started, by saying, "When is the time before last night that you ever called me Dan," and I answered I had never called Mr. Glasser Dan before in my life. I never called him Dan. I never addressed him as Dan. Mr. Glasser told me his phone was an unlisted phone and asked me where I got the number. I told him I got it from the agents. Mr. Glasser then said to me "How did you happen to do that? to call me last night?" and I said the agents told me to do it. I don't remember them telling me that Mr. Glasser had given me two years, and now if they take me back in on another case, Glasser would give me ten years. The agents told me they would let me go if I did this telephoning. Then Mr. Glasser said to me "Did you ever fix a case with me in your life?" and I said, "no." Then he asked "Did you ever talk to me outside of this building in your life?" and I said, "No." Then he asked "Did you ever send anybody to me about your case in an effort to fix it? Did you ever see me talking with anybody about your case, that gave you an idea your case was fixed?" and I said, "No." Mr. Glasser said, "Did you ever call me at all on the phone before?" and I said, "no." Now you have covered all the things he said and I said. He wound up by saying

something about he ought to punch me in the nose and told me to get out of there.

The things that I told Mr. Glasser when he was asking me those questions in his office, I was answering truthfully. It is a fact that I never had tried to fix these other cases. I never talked with Mr. Glasser, never called him Dan, and never called him up. In the first case I had, I was prosecuted by Mr. Glasser and Mr. Kretske, that was before Judge Holly. I was being tried with a man named John DeSalvo, we both started out on a plea of not guilty and were going to fight the case before a Jury. When I saw the evidence and it was about half way through, I decided to plead guilty. The other defendant went ahead, and on the same evidence, they found him not guilty. The Judge was lenient with me, I got one hour, it was a conspiracy and alcohol violation. I don't think the Judge was lenient because someone fixed him. I don't think Mr. Glasser was fixed in the case. The case was just tried on its merits. My lawyer was Walter Duft. He never told me the case was fixed. I never paid any money for that purpose. I gave him \$200.00, I got that from my people. Three fellows in that case got three years apiece, one got thirty days and another got one hour in the marshal's custody, that happened months before I went to trial. They pled guilty. Nothing was said about their cases being fixed, they got three years apiece. In the case on which I was convicted, the indictment was returned October 21, 1937, and was continued from time to time, my lawyer was Mr. Roth. He filed a petition trying to suppress the evidence. I lost that. The end of 1938 I went to trial. Before I went to trial, Roth got \$400.00, Roth did not tell me for that money, he was going to fix my case. He did not tell me that. Then I lost my case and took it to the Circuit Court of Appeals. The fee Mr. Roth told me would be \$500.00 and I paid a hundred and two hundred dollars at a time. I still owe him \$150.00.

841 Q. You told us that you never worked for Yarrio?

A. That is correct.

Q. Can you tell the Court and jury who Yarrio would pay for your bond?

A. I can start a story.

Q. Can you tell the Court and jury why?

A. Where I was employed at this gas station, some fellow came in with a car. When I was arrested on this particular case, he pulled up with a car for gas, and while

the gas attendant was waiting on him, he asked where the mechanic was. The attendant said, "He is back there," and he said, "I would like to see him." Bill called to me, —Bill was the attendant there, and I came out of the gas station and Bill said, "here is a fellow wants to see you about some truck repairs." I walked up to him, and by that time I was left alone with him. He said to me, "Listen, I am from the barber shop. You know Sheeney Albert?" I said, "Yes," and he said, "I would like to have you fix a truck for me," I asked him, "Where is the truck"; he said, "You will have to take a ride with me. I said, O.K. and called back to Bill in the gas station and said, "I will be back, I am going with this fellow." We drove over to Ohio and Halsted, and walked out in a certain gangway, which led directly behind the fence, and there was located a little private alleyway, and in this alleyway was parked a truck. I walked up to it with this man and asked him what was the matter with the truck, and he said the front wheel shimmied. I felt the steering wheel and seen it had a lot of play, and I said to him, "Listen, I will have to take this over to the gas station to work on it." He said, "O.K., how long will it take you?" I said, "Oh, about an hour or so," so he said, "Can I call you there?" I said, yes, and gave him my phone number, and he opened a big door that was part of the fence near the sidewalk,— this was not a building, it was just on the alleyway. He opened these doors and I drove out with the truck. After I traversed about a mile and a half I was arrested by agents of the Alcohol Tax Unit.

842 The Witness: That is the case I got two years for. That explains to me why Yarrio paid the bond. I wouldn't say it was his still, but he might have known whose it was, or maybe he was the go-between for someone. He never told me it was his alcohol.

The Court: Q. Was the truck loaded with alcohol?

A. Yes, there was some alcohol in the truck.

The Witness: I did not tell the agents about this fellow telling me he was from the barber shop, but I told them the rest. At the trial I claimed I had a date with my girl and I put her on and some mechanic to testify for me. My claim is that I was just a victim of circumstances, that is still my contention, I was innocent of anything. The Government never charged me with operation of the distillery. As far as I know, I was never questioned on the owner. I was convicted on two counts for transporta-

tion of illicit alcohol. The truck had something like 185 gallons on it. In the first trial where I got an hour in the custody of the marshal, I wouldn't say I was 100% innocent. The time I went by on Wells Street where the agents chased me, I was innocent again. The agents accused me of tailing a truck into that still. Before the commissioner there were four agents testified. After the Commissioner heard the evidence, he discharged me. Mr. Roth was my lawyer, that case was not fixed. I did not talk to anybody about fixing it. I was discharged because there was not enough evidence. The Commissioner did it honestly. Then it was more than ten days later when Mr. Roth told me there was an agent behind the door. By that time everybody around the building might have known that. I never gave the Government a statement at any time. I was in front of the Grand Jury in this indictment here. The first time I told anyone connected with the Government that I saw Mr. Glasser go by the barber shop and toot his horn was down in Leavenworth Penitentiary when Mr. Bailey and someone came down there in 1939. Mr. Glasser went by the barber shop blowing his horn in 1938. I did not tell anybody about that until I told Mr. Bailey. I did not tell it to anybody else except the Grand Jury.

843 I am up for parole now. I was eligible for parole last October. If they saw fit they could have given me my parole then, but they held me in there. The Bureau of Prisons has charge of me.

When I was over in the new Post-Office and made this phone call to Mr. Glasser that I have told you about, just before that time, I was given the number of Mr. Kretske by the agent. I tried to get him. I talked to his mother, she told me she was his mother, and he was not in, but she would get hold of him. I left her word that I was arrested by the agents of the Alcohol Tax Unit and was at that telephone number I was calling from. She said she would get a hold of Norty and have him call me. It was after that that I called Mr. Glasser.

Redirect Examination by Mr. Ward.

Around the barber shop they called him Norty and Kretske, I understand he was born and raised in that neighborhood, and is known as Norty there. That is over in the Maxwell street district. While I have been in the

Penitentiary, I haven't been called up for any infractions of the rules, so my parole came up in the usual way.

Q. As a matter of fact, you will be out in fifty-five days, isn't that true?

A. That is correct.

The Witness: I said Mr. Glasser told me when I was in his office he was going to send me to the penitentiary, and when I got before the Commissioner, I was discharged. I was a little more involved than my co-defendant in the case before Judge Holly. I didn't know that the men that got two years had criminal records. I don't know anything about that. In the case that I got two years in, Yarrio sort of got me mixed up in. I talked to Yarrio about my case while it was pending.

(Witness excused.)

844 JOE COLE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Joseph Cole, I live in Fox Lake, approximately nine years. I have a restaurant and tavern. I have been married eight years. I have no family. I know the defendant Louis Kaplan for about three and a half years. I met him in my tavern. He spoke in regard to his still. He asked me if I knew of a location, if I could help him find a location, for the still. I knew he meant an alcohol still. I said I didn't off-hand, but perhaps we could look around and find something. I had met him previously at the time he talked about the still to me in his tavern. I talked to him. We just had a few drinks. I was introduced to him by a fellow by the name of Dewes, Eddie. I saw him after that about a week or five days, at the tavern. I talked to him. He asked if I had time to look around, I told him I knew of a spot that looked favorable. We looked the spot over, at Spring Grove.

Mr. Stewart: Your Honor, there is one place I would move to strike,—at the barber shop there, Yarrio said he guessed he would have to go out to see him.

The Court: It may be stricken.

Mr. Ward: All right.

The Witness: Exhibit No. 97 looks like the place, prior

to that, it was milk, a dairy company. Off-hand I did not know about the place, I just would drive by and knew the place was there. I lived in that vicinity approximately fifteen years. I have told you all the conversation I and Kaplan had together about that place. He said he thought it would do. I met him a couple of days, at the tavern. For my helping, I was to receive 20%. I helped to establish and rent the place. I do not recall at present the name of the man I rented it from. I know Peter Frett, he did not have anything to do with that plant. I don't recall whether I had any business dealings with reference to renting that plant with Mr. Frett or not.

We rented it and put a still in it. Dewes and Slesur 845 and myself and Kaplan put the still in. I heard of

Ralph Boguch. I can't say if he had anything to do with it. I wouldn't know whether he had anything to do with putting it in or whether he worked there or not.

I know Louis Pregonzer. He got the insurance for us. The people wanted insurance. I saw Kaplan out at the still two or three times. The still operated. I don't know the man's name who worked in the still while it was operating. None of them ever stayed at my place, they would come in, but I would not recall their names. I saw Kaplan in my tavern about twice a week while the still was operating. I saw Eddie Dewes, I saw Victor Raubunas there in reference to the still. He came in quite regular, two or three times a week. I got to call him Vic. I was in, but I did not help on the inside to work in there. I sold some alcohol once. I told Kaplan I could sell some in Detroit, at least I thought I could, so he said, "Make a trip and see." I was called as a witness before the Grand Jury in the Spring Grove case. I know the defendant Glasser from seeing him in the building. I was before the Grand Jury with him. I did not appear before the Grand Jury on more than one occasion in the Spring Grove still case. I don't recall the month I was there, I could not recall just when it was, I could not say what year it was, I could not say that 1937 was the date. I recall giving testimony before the Grand Jury. Mr. Glasser questioned me in the Grand Jury room. The exact time I was in the Grand Jury room I could not say. He asked me very many questions while I was before the Grand Jury. Louis Pregonzer was there at the same time. I don't recall seeing Pregonzer go into the Grand Jury

room before I was called. He was in the ante room when I was there.

Q. Do you recall going before the Grand Jury in May of 1938?

Mr. Stewart: I object, your Honor. We said he only went once.

The Court: Objection overruled. He may answer, that if he can.

Mr. Ward: Strike that.

846 Q. Do you recall being asked to come to the Federal Building regarding this Spring Grove still, at the time the Grand Jury was in session? Remember that?

A. No.

Q. Do you remember the agent, Mr. White?

A. Yes.

Q. Remember coming to the building and seeing Mr. White?

A. I recall just sort of more of a haze, if anything, as far as that is concerned.

Q. Do you recall the questions that Mr. Glasser asked you and the answers you made to the questions? If you recall, state them, as near as possible, Mr. Cole. Have you any recollection of them?

A. I have a very faint recollection of them.

Q. Do you recall him asking you what business you were in?

A. Offhand, no, I would not recall that statement.

Q. All right. Did you ever have any trouble with your ear?

A. Yes.

Q. What trouble did you have?

A. Mastoid.

Q. Does that refresh your recollection as to what Mr. Glasser asked you in the Grand Jury room? Did he ask you about your ear, what trouble you had?

A. He asked in regard to my health and my condition, yes.

Q. And do you recall him asking whether you were in the hospital?

A. I do not recall directly.

Q. I see. Well, in any event, you remember Mr. Glassner asking you a number of questions?

A. I do.

Q. Then you left the Grand Jury room, is that right?

A. Yes.

Q. Did you ever talk to Mr. Glasser after you left the Grand Jury room, at any time?

A. Why, no. I met the gentleman in the corridor here, and there was just a greeting.

Q. You mean right while this case was on?

A. Yes, just a day or so ago when I was here.

Q. Did he speak to you first and then you speak to him?

A. He asked how my health was and how I was feeling.

Q. He just passed a greeting, is that it?

A. Yes.

Q. Did that refresh your recollection and carry your memory back to the time when he was in the Grand Jury room with you? Seeing Mr. Glasser, did that cause you to remember him back in May of 1938?

A. No,—I remember him, yes, very faint, in the building. Of course, I could not say the day, though.

Q. That is all right. Do you know a person by the name of R. W. Nessler?

The Court: It might save time,—do you intend to offer that testimony?

Mr. Ward: Yes, your honor.

The Court: Why not submit it now?

Mr. Ward: All right.

Q. You were indicted by the Grand Jury—

A. Yes, sir.

Q. Indicted by the same Grand Jury that you appeared before, were you not?

A. Yes, sir.

Q. Did you sign any papers before you started to testify? Did Mr. Glasser ask you to sign any papers?

A. No.

Q. Do you know whether Pregonzer signed any papers?

A. No, I do not.

Q. Do you recall being sworn, raising your right hand in there?

A. I do.

Q. Do you know who was indicted with you in that case?

848 A. I understood it was—

The Court: Tell him.

Mr. Ward: Q. Louis Pregonzer?

A. Yes, but I just—

Q. Go ahead.

A. I understood it was Louis Pregonzer, Kaplan and Vic and Stanley Slesur.

Q. That was subsequent to that, was it not?

A. That was the way I—

Mr. Stewart: He didn't say subsequent, your honor.

Mr. Ward: We will show there were two indictments.

Mr. Stewart: He has not told you that. I object to Mr. Ward telling that.

The Court: We are talking about one time in May of 1937,—or 1938.

Mr. Ward: Kaplan was no-billed in that case. There were four men. He is talking about the indictment I was in, and I am talking about—

Mr. Stewart: My objection is, your Honor, he is proving the very thing we claim about him, that he is in no way reliable to understand the question and answer.

The Court: I got the impression that we were still talking about the jury Mr. Glasser had charge of.

Mr. Stewart: Judge, but Mr. Ward tried to change him off on something else. Perhaps it was unintentional, but—

The Court: Q. How many times have you appeared before a Grand Jury in this building as a witness?

The Witness: A. As a witness?

Q. Yes.

A. I really recollect once that you would exactly call a Grand Jury, I would not exactly say. I have been questioned and brought in.

849 Q. You know what a Grand Jury is, don't you?

A. I have a faint idea, or a fairly good idea, rather.

Q. When you appeared before the Grand Jury, what Government Attorney appeared before that Grand Jury and asked you questions?

A. The gentleman (indicating).

Q. Mr. Ward?

A. Yes.

Q. Did Mr. Glasse ever ask you any questions before a Grand Jury?

A. Yes, Mr. Ward—I recollect the time there was two of us called. That was Pregonzer and I. We drove in from Fox Lake and—

The Court: Go ahead and tell us.

A. He and I. I was the first called in, and as I finished in the Grand Jury room, I stepped out in the corridor. Whatever took possession there then, I could not say.

Q. What lawyer represented the Government at that time?

A. It was Mr. Glasser.

The Court: That was in 1937?

Mr. Ward: May of 1938, Your Honor, May 17, 1938.

The Court: That was the month of May, in 1938.

Mr. Stewart: You see, Your Honor, that is the trouble. If you have Mr. Ward tell the date, you have it all mixed up.

The Court: That is all right. We have it straight. We don't need any help.

Q. You appeared another time before a Grand Jury, When Mr. Ward was the Government attorney?

A. Yes, sir.

Q. About when was that?

A. In regard to dates, I could not state.

Q. Was it last year?

A. It was fall, approximately, 1938 would be about the last, approximately a year, or in that neighborhood.

850 Q. Was that the last time you were before a Grand Jury?

A. That would be my way of remembering. I do not recall that date.

The Court: We have those dates fixed now.

Mr. Ward: I ask leave at this time to read his testimony before the May, 1938 Grand Jury.

Mr. Stewart: I object. What has that to do with it? I would like to cross examine him.

The Court: Objection overruled. You may read it.

Mr. Ward: (Reading testimony of Joe Cole before the May, 1938 Grand Jury.)

Mr. Balaban: The defendants, jointly and severally, move that the Court withdraw a juror in favor of a mistrial, because of the prejudicial nature of Exhibit 96 which has just been concluded.

Mr. Callaghan: Let the record show that motion is on behalf of all defendants.

The Court: You are referring to that part taken from the transcript before the Grand Jury?

Mr. Balaban: Yes, your Honor, it is a Grand Jury record, is it not?

The Court: Yes.

Mr. Balaban: And is noted in the record as Exhibit 96.

The Court: It is a transcript of some of the testimony that was taken before that Grand Jury.

Mr. Ward: That has been stipulated to.

The Court: Objection overruled. You may have an exception. Proceed.

Mr. Ward: Q. Now, while the Court was in recess, Mr. Cole, I handed you these pictures to look at. You have looked them over, have you?

A. I did.

Q. What are those pictures?

A. Pictures of the still in Spring Grove.

851 Q. Now, while you were in before the Grand Jury in May of 1938, did Mr. Glasser ever show you these pictures? Yes or no, did he ever show you these pictures?

A. I don't recall.

Mr. Ward: All right. The pictures I refer to have been identified heretofore as the Spring Grove pictures, and the numbers are there. They are offered in evidence.

The Court: Any objection?

Mr. Poust: I object to them, Your Honor, as not properly identified.

Mr. Ward: The Witness has testified they are true and correct representations of what was out there. Without the photographer, they would be admissible.

The Court: Objection overruled. They may be admitted.

(Whereupon the said photographs were received in evidence and marked EXHIBITS #97 to 112, inclusive.)

Cross-Examination by Mr. Stewart.

That is my signature on #113, I remember signing that affidavit for the agents, I do not recall the date, I remember signing it, I could not say if I noticed it was dated at the top when I signed it. I noticed what it was when I signed it. In a general way, I knew what was in the statement. I would know before I signed the statement. I went down when this trouble was about, out there, the agents had me. They had me sign a big long statement. About how I met those people out there, met Kaplan and made arrangements. They went down-town to the entrance of the place. When I nod my head, I mean yes. While

all of this was fresh in my mind and I was in that trouble, when Mr. Glasser was there representing the Government, I came down here before the Grand Jury and I was asked questions which brought up about Kaplan and different things, and I told them all I know about it.

852 Q. What has been your experience in hospitals; you have been treated out at Hines, haven't you?

A. Yes.

Q. You are collecting compensation from the Government?

A. I am not.

Q. You are not now?

A. By all means, no.

Q. Have you a war record?

A. Pardon me.

Q. Did you get your injuries in service?

A. I did not.

Q. You have seizures, don't you?

A. Pardon me.

Q. Do you have seizures? Do you know what I mean by seizures?

A. No, I don't.

Q. You call them convulsions, don't you?

A. Yes.

Q. When you have those convulsions you lose consciousness, don't you?

A. I just fall over.

Q. Fall right over?

A. Yes.

Q. That has been diagnosed for you, hasn't it, by your doctors?

A. It has.

Q. They call it traumatic epilepsy?

A. No.

Q. What do they call it?

A. Absolutely not. It is caused from the stomach, and they have given me medicine, two kinds of medicine to overcome it.

Q. Have you had X-rays taken?

A. I have.

Q. Did they show anything in your head?

A. They show nothing, nothing wrong as far as the head is concerned.

853 Q. Do you remember the name of the hospital here in Chicago that you were in?

A. Henrotin.

Q. Do you remember when you went in and when you came out?

A. I do not.

Q. Were you there more than once?

A. Once, I was in there once, and I have been in the Hines twice.

Q. Well, that is what caused me to ask you about service.

A. Pardon me.

Q. Isn't that for service men out there at Hines?

A. Yes.

Q. But you are not an ex-service man?

A. I am.

Q. Well, didn't you tell me a few moments ago you were not?

The Court: He told you what he was suffering from, it wasn't caused in the service. That is my understanding.

Mr. Stewart: Your Honor, I don't question your Honor's intelligence. I would like to find out what his is.

The Court: Go ahead.

The Witness: I understand.

Mr. Stewart: All right.

The Witness: You mean service men in the last year, is that what you are referring to?

Mr. Stewart: Well, I just wanted to know what you are referring to.

The Court: Well, that is what he is referring to.

The Witness: I don't hear at times.

The Court: That is what the court understood him to say.

The Witness: I have one ear is all.

854 Mr. Stewart: Q. On March 7, 1937 in Detroit, Michigan, were you charged with carrying concealed weapons?

A. No.

Mr. Ward: I object to that.

The Court: The man was arrested and convicted and that question is improper and may be stricken.

Mr. Stewart: I understood differently.

The Court: You know the proper procedure.

Mr. Stewart: With all due respect to the court I thought I know it.

The Court: I know you know it.

Mr. Stewart: Q. You were convicted before Judge Barnes and given three months and fined \$100 and costs, weren't you?

A. It was not for concealed weapons. I was in this court, or in this town, yes.

Q. That was buying, selling and possessing and nuisance at the Wigwam Tavern?

A. Pardon me?

Q. What was it for?

A. Liquor, the sale of a drink of liquor over a bar.

Q. Where?

A. At the Wigwam Tavern at Fox Lake, Illinois.

Q. Then you were sentenced to a year and a day in the Federal Penitentiary before Judge Holly?

A. No.

Q. Weren't you—

Mr. Ward: Now, just a moment. Unless Mr. Stewart can substantiate it, your Honor, it is highly improper to ask a witness that unless he knows when. He is asking that question and is not substantiating it.

The Court: It doesn't help. Don't ask questions unless you can prove it.

855 Mr. Stewart: Well, I am reading it from the report.

The Court: That is his responsibility. That question is—

Mr. Stewart: Q. Isn't it a fact before Judge Holly you were sentenced to one year and a day in the Federal Penitentiary?

A. No.

Q. Were you up before Judge Holly?

A. No, never sentenced, never was in the penitentiary.

Q. Were you ever before Judge Holly?

A. No, I don't recall if it was Judge Holly that sentenced me for the sale of liquor to three months in jail. I don't recall whether it was Judge Holly or another judge. I could not say which judge it was.

Q. That conviction was in what year, the three months?

A. Approximately eight years—

Q. Ago?

A. That is before repeal.

Q. Your record here shows April 14, 1932, is that right?

A. That would be approximately.

Mr. Ward: That is eight years.

The Witness: The date—

Mr. Stewart: Q. Then were you before Judge Holly on May 10, 1935?

A. No.

Q. Were you arrested on August 9, 1934 at Fox Lake, Illinois in connectiton with that case you were convicted in?

A. In what case?

Q. In the case that went before Judge Holly.

A. No.

Q. Did these people that were interested in that distillery out there with you make arrangements with the people in your tavern to come and live at your tavern?

A. They spoke in regards to the tavern my wife owned, but they did not occupy it.

856 Q. Now, listen while I read this paragraph. I am reading out of your statement. Maybe I better let you look at it at the same time, the questions. Had you put your initials on each page when you signed your statement?

A. Yes.

Q. (Reading.) "Sometime during the first part of November, 1936, I was instructed to introduce to a man called Stanley by Mr. Kaplan, and was given to understand this man was an employe of Mr. Kaplan who was sort of a boss, and at the same time I was instructed by Mr. Kaplan to make arrangements to board and room the men who were erecting and operating the distillery, and accordingly I made arrangements for these men to sleep in the cottage near the tavern at Fox Lake and they took their meals at my tavern." Did you make that statement?

A. I made arrangements.

Mr. Ward: Just a minute. He said he did.

Mr. Stewart: Just a minute.

A. That was prior when we spoke about it, but never lived up to it or never made arrangements to use it.

Q. You mean you made arrangements but it was never done?

A. It never materialized.

Q. After the trouble out there, after the still was raided, did Mr. Dewes come around to you and talk to you afterwards?

A. No.

Q. Did he tell you to keep quiet about what you knew?

A. The first time I saw Dewes was here yesterday, or the day before when he was in the building.

Q. So that didn't happen, did it?

A. No.

Q. Well, you look on while I read this paragraph out of a statement over your signature: "After the distillery was seized by the Federal Officers on January 19, 1937, Mr. Edward Dewes came to my tavern in Fox Lake, and informed me to keep quiet about what I knew about this distillery and I have not seen any other men in regard 857 to the operation of that distillery."

A. I say—

Q. Was it true?

A. Yes. I didn't see the man when he was there as I wasn't there.

Q. This says "came to my tavern and informed me," doesn't it?

A. Yes, that may be that way, but it wasn't—

Q. Then the statement isn't true, is that it?

A. He was in the tavern?

Q. Yes.

A. But I didn't see him, I wasn't there the day when he was there.

Q. The statement says "He came in the tavern and informed me to keep quiet about these men," is that statement true?

A. That way it is true to this extent that he has made that statement there.

Q. Who did he make it to?

A. My wife.

Q. But you didn't say it in your statement here I just showed you?

A. Perhaps I—

Q. Perhaps the agents misunderstood when they were writing up your statement?

A. Perhaps I misunderstood them.

Mr. Stewart: Your Honor, for the purpose of the record I wish to make an offer of proof I already offered here in the record that has been filed, and if your Honor had not sustained the objection I would like to have gone into the question of these arrests that are shown here.

Mr. Ward: Let me see that.

Mr. Stewart: You still object?

Mr. Ward: Perhaps if you read it all to him he would have understood it.

Mr. Stewart: Do you want me to read it all?

Mr. Ward: You asked him about being sentenced, 858 and the record shows he was and the sentence was suspended and he was placed on probation.

Mr. Stewart: That is only one.

Mr. Ward: Is that what you asked about before Judge Holly.

The Court: The point is this: The proper question to ask would be has the witness been arrested and convicted. That is the only question to ask, but to ask if he was arrested is improper. I don't care what the record shows.

Mr. Stewart: Your Honor, on Judge Holly's record the rest of the record does show as Mr. Ward intends, the record does show him on probation, but I understand that is a conviction.

The Court: Oh, yes.

Mr. Ward: The government will stipulate, but we don't have to. It is in the report that is in evidence. You were asking this witness a question trying to make it appear he was in the penitentiary, but his sentence was suspended.

Mr. Stewart: I had no intention except to bring out the truth. Your Honor, to preserve my record, and with all respect to the court I want the record to show that if permitted to examine further I could show these numerous arrests in the report.

The Court: Your offer is denied, and the objection is sustained.

Cross-Examination by Mr. Balaban.

Q. Do you know the defendant Anthony J. Horton?
Mr. Cole, do you know the defendant Anthony—

The Court: He has only one ear.

Mr. Balaban: Q. Do you know the defendant Anthony J. Horton?

A. Horton, no.

(Witness excused.)

859 LOUIS PREGENZER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is Louis Pregenzer, I live in Antioch, Illinois, I know Joe Cole, Louis Kaplan, Victor Raubunas and Stanley Slesur, I don't know Ralph Boguch.

Some time previous to 1937 I visited Joe Cole's tavern at Fox Lake, three or four times a week. I saw the defendant Louis Kaplan there numerous times. The first time I saw him was in the fall of 1936, when all four of them were together, that is, Raubunas, Kaplan, Dewes and Slesur. I never went to the Borden Wieland Dairy building. I know a still was being operated there. I did not testify before any Grand Juries in my life. I was subpoenaed to testify before the Grand Jury on May 17, 1938. At that time I refused to testify. I don't know who had charge of that particular Grand Jury. I didn't see anybody there who appeared to be in charge of it, I don't know, I don't know who was at the head of it. I know where the 1933 grill is in Chicago. It is located on Dearborn Street right across from the Tribune Building, just south of Madison Street. I was in that place shortly after that Grand Jury, or else possibly that same day. I met Lou Kaplan there. I don't remember the words that were said, but our conversation there was about what he was going to do as far as I was concerned in that case, and the only answer I could ever get from Kaplan was as far as Kaplan was concerned, all he told me was, "Don't worry." We were joined at that time and place by the defendant Kretske. At that time I was given to understand that Mr. Kretske was Kaplan's attorney. I don't believe there were six words said with Kretske. All that was said at that time Kaplan wanted Kretske to verify what he said, Kretske said, "Don't worry, you have nothing to worry about; you will be all right." That was all the conversation at that time. We talked of different things, but that is as far as Kretske and Kaplan are concerned. That is all I remember.

860 I got insurance for the place at Spring Grove. The insurance agent was Bannister, from Genoa City. I did not have anything else to do with that still directly.

I went to Detroit, Michigan with my brother-in-law, Cecil Simms. I didn't follow anyone to Detroit. I drove in my car. I paid the premium on the insurance policy. It was given to me by Kaplan and Raubunas, I am not sure which one gave me the money, it was before they could start operations in the place, because they couldn't fire the boiler before they had the insurance on it, at least I don't think they did.

Cross-Examination by Mr. Stewart.

I am under indictment as one of the owners of that place at Spring Grove.

Cross-Examination by Mr. Balaban.

I do not know the defendant Anthony Horton.
(Witness excused.)

H. WILSON McFARLIN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is H. Wilson McFarlin, I am assistant special agent in charge of the Federal Bureau of Investigation at Los Angeles, California.

I was located in Chicago, I know the defendant Daniel Glasser. On December 10, 1938 at the request of my superior, Mr. Ladd, who was in charge of the Bureau of Investigation, I went to Mr. Glasser's office, in room 857 United States Attorney's office.

When I got there I saw Mr. Glasser, after which I secreted myself in the anteroom of Mr. Glasser's office. I left the door open about a quarter of an inch. I overheard a conversation between two persons, while I was in that room. The defendant Glasser spoke to this other person in a loud voice, and he demanded to know why he had 861 been called on the telephone the preceding night. The other person answered, "I was told to call you by Casserly and Harks." Glasser then demanded to know how he got his home telephone number. The other person answered, "Casserly told me what your telephone number was." Glasser then asked him why he called him Dan

over the telephone, and the other person answered, "Well, I didn't want to use your last name." Glasser then asked him if he had ever called him Dan before. The other person answered no. Glasser asked him what the purpose was of his calling him Glasser the preceding night. The other person answered that he had been informed by Harks and Casserly to call him, Glasser, and to have Glasser agree to speak to Casserly over the 'phone, and guarantee to Casserly that he, this other person would pay money to Casserly and Harks. That is what Svec said to Glasser, and Glasser said to him, "Well, why didn't you let me talk to Casserly?" And the other person said, "Well, after I talked to you over the 'phone, why I knew it wouldn't do any good." And Glasser said, "Did you ever pay me any money?" And this other person answered, "No." Glasser then said, "Did I ever promise you anything in regard to any prosecution?" And this other person said, "No." Glasser said, "Did you ever see me outside of the United States Court House?" This other person said, "No." Glasser then said, "Why did you tell me to call Sheenie Albert?" And the other person said, "Well, I knew Sheenie Albert." And Glasser said, "Did you ever see me with Sheenie Albert?" This other person said, "No." And Glasser said, "Will you give me a written statement as to what you have just told me?" This other person said, "Yes, but I won't give it to the Alcohol Tax Agent." Glasser said, "Well, I ought to punch you in the nose." And both Glasser and this other person left the room.

Cross-Examination by Mr. Stewart.

Q. You made a report of that, did you, immediately after it happened?

A. That is correct.

Q. And while it was fresh in your memory?

A. That is correct.

862 The Witness: I have examined that report before going on the stand, and have tried to tell as accurately as I could what was said in that room. I don't think before that time I had ever worked with Mr. Glasser on any cases. I knew him to pass the time of day. I wouldn't classify him as among my friends. I knew that the request for me to come over to his office that morning came from my superior and it originated with Mr. Glasser. He

wanted a man to come over. Mr. Glasser didn't have any reason to suspect I would give anything but an honest report of what happened. I would know of it if he did. This was done in line with my duty. When I saw Mr. Glasser after I reported there he told me in a general way what he wanted me to do. He didn't ask me to take care of his interests, particularly. He didn't ask me to do anything but report it properly. I went back and reported it to my superior. That work is one of the duties of our department. I have heard of it around other departments. Mr. Glasser said that he had received a telephone call the previous evening at an unlisted number, and that this telephone call came from one called Svec, whom he knew was in the custody of the Alcohol Tax Agents, and therefore he assumed that the call was made at the request of the Alcohol Tax Agent by Svec, and he said if that was the case he thought he was being framed.

Redirect Examination by Mr. Ward.

Anything I go out to investigate I always turn in what I see or hear regardless of who it affects.
(Witness excused.)

H. A. GODDARD, recalled as a witness on behalf of the Government, having been previously sworn, was examined and testified as follows:

I am the same Mr. Goddard who was called to the stand and testified previous to this. I was assigned to make an investigation regarding a violation committed by 863 Walter Kwiatkowski, at 7915 Saginaw Avenue, Chicago, in 1938. After I completed that investigation I made a supplemental report to Mr. Ritter.

Mr. Ward: Mark this exhibit #121.

(Document so marked.)

Mr. Ward: I will read Exhibit Number 121, a letter dated November 10, 1938, reading as follows:

"In case Number 2143, United States Attorney, United States Court House, Chicago, Illinois. Attention of Mr. D. D. Glasser, Assistant United States Attorney. In re: Walter Kwiatkowski, 8010 Saginaw Avenue, Chicago, Illinois. "Dear Sir: There is enclosed herewith a supplemental United States Report relative to one Walter Kwiatkowski. It is my understanding that the complaint

against this man was originally dismissed by the Commissioner because of insufficient evidence. In view of the subsequent investigation and additional evidence secured, it is requested that you reconsider this case with a view of presenting the same to the Grand Jury. After you have reviewed the entire case I will appreciate being advised of your decision with respect to further prosecution. Signed, Yours very truly, Robert B. Ritter, Investigator in charge."

(Witness excused.)

(Whereupon Mr. Ward read Exhibit #120 to the jury as follows:)

Mr. Ward: This report is dated November 9, 1938, report addressed and forwarded to the United States Attorney for prosecution, signed by Robert B. Ritter, Investigator in Charge, it is in the Walter Kwiatkowski case. The names of a great number of people interviewed by the Investigator, Mr. Goddard, appear on this report. Blanche Korn was interviewed here, in which she stated she had occasion to watch the premises where Walter Kwiatkowski lived, and she frequently saw Walter Kwiatkowski 864 coming in and out of these premises over a period of at least a year, carrying packages in and out. On one of these occasions she talked to him, and he told her he was buying the premises at 7915 Saginaw Avenue, and she said she complimented him on the nice way he kept the house, and asked him for some black dirt. Another witness was Mr. McCormick, who ran a gasoline station, he was interviewed, and said Kwiatkowski was an especially good customer, by buying considerable quantities of gas and oil for his automobile, and that he sometimes parked it at the filling station, and that he smelled the odor of mash emanating from the premises of 7915 Saginaw Avenue. That his gas station runs possibly within a few feet of the premises of the violation. The still was in operation for about a year. October 19, 1938 the Investigator, Goddard, showed him a picture of Walter Kwiatkowski, and he identified it as being Walter Kwiatkowski, but the man only knew his name as Joe. Another man, Dreska, testified to the activities of Kwiatkowski around the premises, fixing it. Another man, Kraemer, tells about leasing the garage, and he had part of the garage, and then Kwiatkowski got the entire garage, and they had him move out. That was before the operations were started. A man named Kopper was here inter-

viewed, and he had an automobile damage suit, and that suit was settled, and he identified Kwiatkowski as the man as he recalled, and there was a receipt found in the premises, showing this settlement. A man named Biske was interviewed, and he states that Walter Kwiatkowski was known to him as Walter Flowers, and he frequently came to that particular gas station and bought oil. There are several witnesses, one in particular who says that he was employed by Kwiatkowski for the period of over a year, and that Kwiatkowski paid him so much a can for delivering this alcohol, that he worked for Kwiatkowski over a year. Over two years. "During the two years I assisted Kwiatkowski in delivering the alcohol. He paid me 50 cents a five-gallon can for making deliveries," he said. And Kwiatkowski told him he got \$15.00 for a five-gallon can. A man named Quewitz was interviewed, and he stated he was connected with the bank, the same 865 bank that the witness testified about, and if he was subpoenaed he would testify about the withdrawal of this money, and that on that day Kwiatkowski was accompanied to the bank by Attorney Henry Balaban. Then the last witness interviewed is the party who owned the premises, who would testify that they actually leased the premises over to Walter Kwiatkowski. That is the supplemental report which was submitted to the Defendant Glasser.

SYLVAN WHITE, recalled as a witness on behalf of the Government, having previously been sworn, was examined and testified as follows:

Cross-Examination by Mr. Stewart.

I am the same Sylvan White who was on the stand before. I am familiar with the report called exhibit 113. Part of my report of the affidavit made by Alfred Smeltzer to me was, "After the distillery had been seized in the old Borden milk plant on January 19, 1937, Edward R. Dewes said to him he had better not identify him, Dewes, as being connected with the distillery." This statement was made to me, Joseph Cole's statement is sworn to, Mr. Cole's statement to me was, "After the distillery was seized by the Federal Officers on January 19, 1937, Mr. Edward Dewes came to my tavern at Fox Lake and in-

formed me to keep quiet what I knew about this distillery, and I haven't seen any other men who were interested in the operation of this distillery since that time." He didn't tell me anything about his wife. As a matter of fact, if the threat was made by Dewes to the wife, the proper procedure which I would have followed, would be to go out and get an affidavit from the wife.

(Witness excused.)

866 CHARLES G. ELLIS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Charles G. Ellis, I live at 2076 Greenleaf Avenue, Chicago. I am an insurance agent. I was the secretary of the May 1938 Federal Grand Jury. No. 95 is my record that I kept as secretary of the Grand Jury. It is in my hand-writing. Mr. Glasser represented the Government in alcohol cases before our Jury.

Q. Do you recall when you were secretary of the Grand Jury, a case under investigation by your Grand Jury, known as United States versus Louis Kaplan and others?

A. It sounds familiar.

The Witness: Well, my recollection is the case was brought out with the inference that certain men were the officials of the brewery, so to speak, or distillery, and others were more or less just small fry. The testimony was given to us in more or less of a rapid fire manner.

Q. Now, do you recall the Grand Jury having some discussion about the Kaplan case, just yes or no?

A. Yes.

Q. And do you recall at that time that Mr. Glasser was in the room with you?

A. Well, only in part, we asked him a few questions.

Q. That was when the case was being presented, is that true?

A. That is true.

Q. And is it not the custom that when a Grand Jury decides to talk things over, that they usually request the Assistant United States Attorney to leave the room?

A. That is right.

867 Q. And was it on one of those occasions that you had a discussion about the Kaplan case outside of the presence of Mr. Glasser?

A. We discussed that when he was outside the room, yes.

Q. Now, do you know whether Glasser was recalled into the room by the Grand Jury?

A. Yes, sir. We requested him to return.

Q. And when he returned, what was said to him by you or any other member of the Grand Jury in your presence, and what did he say?

A. We asked to have the case re-presented.

The Court: Who asked?

A. Well,—

Q. Some member of the Grand Jury?

A. Some member of the Grand Jury.

Mr. Ward: And what did he say?

A. He went over the case in quite a similar manner to which he did at first.

Q. Now, do you recall the defendant Kaplan, Raubunas and Dewes being no-billed by your Grand Jury?

A. Yes, I do.

Q. Do you recall whether or not there was any additional conversation other than that small fry conference regarding Dewes, Kaplan and Raubunas?

Mr. Stewart: I object.

The Court: Objection overruled.

The Witness: Only my recollection of it, it was inferred that they had been in a couple of more cases.

The Court: Clear that up for us?

Mr. Ward: Q. Did you ask Mr. Glasser anything about Kaplan, Raubunas and Dewes?

A. Not to my knowledge.

868 Q. And do you recall indicting certain parties there in that case?

A. Yes, I do.

The Witness: I think we had a conversation with Mr. Glasser as to who would be named in a true bill. I don't know the exact wording, of course. The inference he told us who the men were, who should be indicted, and after the Grand Jury considered the case by themselves, we decided that the District Attorney naturally being the Government representative, that he knew who were the men to be indicted, and we took his counsel. These pictures which are described in this record as the Spring Grove

still pictures were not presented to us. We knew it was considered a very good sized distillery, we had several witnesses examined before us. They were examined by Mr. Glasser.

Q. Do you recall a particular witness by the name of Joe Cole?

A. Yes, I do.

Q. Will you tell us the manner in which Glasser questioned Cole before the Jury?

A. Well, before Mr. Cole was brought in we were informed that his testimony really didn't have to be considered, because the information, most of it, was relative to Mr. Cole's illness and certain conditions which led us to believe that he perhaps—well, you might say was not mentally all there. When the question was brought up,—when Mr. Cole was being examined by Mr. Glasser he asked him practically only questions relative to his physical condition when he was in the hospital, and so forth.

Q. Now do you recall any testimony that was presented to you about Louis Kaplan?

A. His name was mentioned, but I don't recall any testimony taken.

Q. You don't recall. Do you recall any testimony regarding Dewes, or somebody with a name other than Dewes, that was supposed to be Dewes? Do you recall anything about that?

869 A. I remember that there was a Mr. Dewes with several aliases and various testimony, but I don't remember just what was said at that time.

Q. Do you remember a witness named Alfred Smeltzer appearing before you?

A. He might have, I don't remember.

Q. Now you know there was a court reporter there taking down notes of the proceedings, was there not?

A. Yes, there was.

Q. How long a period lapsed—you say when Glasser presented that Kaplan case you asked him to re-present it. How long a period of time lapsed between your request and Glasser's return to the Grand Jury?

A. Well, we didn't ask Mr. Glasser, we reported to those in charge of the Jury, we wanted Mr. Glasser returned.

Q. Who did you report to?

A. I forget whether it was yourself or—

Q. Mr. Morgan?

A. Mr. Morgan. I think it was approximately a week or ten days before the Jury convened again.

The Court: What occasioned that request for a second presentation?

A. Simply the manner in which the case was presented to us. We didn't feel we were justified in making the decision at that time.

Q. Was it made known to you when it was presented who the owners of the still were?

A. No, it was presented practically figuring the men who were indicted were the men who really owned the still.

Q. You indicted—those you did indict, you believed to be—

The Witness: A. To the best of our knowledge, from the information presented to us.

Mr. Ward: Q. Now is there anything on 95 here, outside of the red lettering DC-31010, and stamped June 870 1st, 1938, and of course the printed matter up at the top, that is not in your handwriting?

A. All the rest is in my handwriting, or attempted printing.

Q. Attempted printing. Do you recall when your Grand Jury was discharged, Mr. Ellis?

A. It was discharged the latter part of June.

The Court: What year?

A. 1938.

Mr. Ward: Q. And subsequent to the time you are speaking of, namely, the time when you returned this bill dated June 1st, Mr. Glasser appeared before you again at that time and asked you to reconsider that case?

A. No.

The Court: Well, was it presented a second time?

A. Yes, it was.

Q. Was there any difference in the testimony submitted the second time than that presented the first time?

A. To my knowledge it was about the same.

Cross-Examination by Mr. Stewart.

Q. Can you name, without looking at your record, the people you indicted?

A. No.

Q. Can you name the witnesses that appeared before you, without looking at your record?

A. No.

Q. Can you tell me the name of any one of them?

A. No, only through having seen their names in the newspaper, and having the case refreshed.

Q. That is since this trial started, you mean?

A. Yes. None of the cases now.

871 Q. Can you name the defendant in any indictment that you returned at that time?

A. No.

Q. How long ago has it been that you were on the Grand Jury?

A. It was on the May 1938 Grand Jury.

Q. And when were you questioned by representatives of the Government in such a way you knew you were going to be called here as a witness?

A. I was contacted in the Fall of 1939.

Q. So you wouldn't undertake now to claim that you have a memory of what happened before the Grand Jury, would you, in this case concerning evidence. For instance, I will pick out Stanley Sonseratis—did you indict him?

A. The record will show.

Q. No, I am asking you.

A. I can't remember those things.

Q. You don't know whether you indicted him or not?

A. After the case was over,—my business keeps me occupied, so I don't remember those things.

Q. You just dismissed it from your mind?

A. Absolutely.

Q. So you can't tell me now, what evidence was presented before that Grand Jury that might have implicated Stanley?

A. Not unless I began discussing it with some of the men on the Jury, and we would refresh our memory.

Q. Now, these pictures that Mr. Ward showed you, will you look at those again, please? Now do you see anything there that would indicate who the owners of the still might be?

A. No, I don't.

Q. Do you know now, from your own memory, where the still was located?

A. Yes.

Q. Where?

872 A. Spring Grove, Illinois.

Q. And you knew it was a large still, didn't you?

A. Yes.

Q. And you knew that the men who operated it had

leased a place from the Borden people. When I mention it, doesn't it bring it back to your mind?

A. It brings it back.

Q. Do you think there is anything about these pictures that would have assisted you in indicting these men in the No Bill? Do you find any evidence in those pictures against the men who were No Billed?

A. No.

Q. Is there anything about those pictures that would assist you to a better understanding of the size and location of the still?

A. Perhaps it would have helped us to understand the size of the still.

Q. Well, you knew it was a big one, did you?

A. We knew it was a big one. But not until you see the picture you can always visualize better than you can by just hearing a thing.

Q. Was there anything different in the indictment you returned whether there was a big one or little one?

A. I don't believe there would have been, because the District Attorney told us who the main men were running the distillery.

Q. See if I can't refresh your recollection.

A. Yes, sir.

Q. Did you have a blackboard in that case?

A. Yes, sir.

Q. And did an agent come in and give you a sort of blackboard talk?

873 A. He did.

Q. Did you know the name of that agent?

A. No, I don't.

Q. Do you know what he looks like?

A. No, I don't remember.

Q. But you do remember he put the Defendants' names that they were going to present the case on in the order what he considered there important?

A. Yes, but I don't remember whether it was this case or some other case.

Q. Well, see if I can refresh your recollection. Mr. White came in and Mr. Glasser was there, wasn't he?

A. Glasser was there, yes, sir.

Q. And Mr. White, at the request of Mr. Glasser, told you gentlemen in a general way the nature of the case they had worked up, isn't that right.

A. If I remember correctly.

Q. And Mr. White took the blackboard and made a list of proposed defendants on it, isn't that right?

A. Right.

The Court: The defendants or names of witnesses, do you recall?

Mr. Stewart: No, the defendants, Your Honor.

Mr. Ward: I think the record will show, Your Honor, I don't like to dispute Mr. Stewart.

The Court: Well, what is your recollection?

Mr. Ward: I think it is in the October Jury White talked to.

The Court: Well, let us find out what the practice was here. Was there a blackboard used?

The Witness: There was a blackboard used. As I say, I don't know what case it was used in.

874 The Court: What was the practice, to write the names of the proposed defendants, or names of witnesses?

The Witness: A. If I remember correctly, it was only the defendants, because they had so many aliases.

Mr. Stewart: Q. And from the talk that Mr. White gave you before you started hearing evidence, you understood in a general way that Kaplan was one of the main people to be investigated, didn't you?

A. I don't remember.

Q. And isn't it a fact that he put the defendants that he proposed to present cases against in the order of their importance as he understood them. Number 1 man, Number 2 man, Number 3 man, down to the little fry at the bottom, isn't that the practice he used?

A. I don't remember.

Q. And how long was Mr. White there, lecturing you concerning the case for the Government, do you remember that?

A. No, not very long; I don't think more than about five minutes that he put the names on. What case it was, I don't remember, but he put the names on the blackboard and told us a little bit about it, and left.

Q. Well, do you think Mr. White was hurried out by you gentlemen?

A. Absolutely not.

Q. And you gave him every opportunity to tell the case, didn't you?

A. Sure.

Q. And there was nothing dishonest about his conduct there that you were able to observe, was there?

A. No, sir.

Q. And he didn't appear to be withholding any information that the Government had against these people in describing it to you, did he?

A. No, sir.

Q. And you didn't have any suspicion about him either, did you?

A. Suspicion about who?

875 Q. Mr. White, as he was presented that.

A. No, there was no cause for suspicion.

Q. And when you were examined down here to serve on the Grand Jury, weren't you first taken into some court room so you could be given some general instructions?

A. We were.

Q. What was the name of the Judge?

A. I don't remember whether Judge Wilkerson or who, I don't remember.

Q. Well, you don't remember very well anything about all of this business, do you?

A. Why should we remember who the Judge was that we appeared before a matter of two or three minutes and then walked out?

Q. Well, didn't the Judge tell your duties in a general way?

A. Absolutely.

Q. Do you remember any part of that talk?

A. Well, I wouldn't say I remember, except that we were to give the men a fair trial, and make the decision, telling us the way the Grand Jury acted, and what their duties were.

Q. Now you knew enough about your duty to know that the result of a presentation, what you should actually do was not in the hands of anybody but the Grand Jury, was it?

A. That is right.

Q. It was your responsibility, wasn't it?

A. It was our responsibility to make our decision according to the way the District Attorney presented the cases.

Q. Well, you didn't have to indict people just because the District Attorney asked you to, did you?

A. No, I don't think the record will show that we did.

Q. And you would go by what you think was the right

thing to do, after listening to everybody, including what the District Attorney had to say?

876 A. That is right. To my knowledge, though, we only hear one side of the case, what the Government presents to us to consider an indictment.

Q. Well, that of course is the practice, you know that. And Mr. Ellis, you realize that this is rather important to these people?

A. Absolutely.

Q. That they are entitled to a fair trial?

A. Absolutely.

Q. And if you don't remember a thing you will gladly tell me so, won't you?

A. I so stated.

Q. Now, do you remember anything that happened during that presentation other than you have told me about any witnesses?

A. None other than I have told you we had different witnesses, before us, and they were cross-examined by the District Attorney, and afterwards we formed our opinion according to the information given us.

Q. Well, can you give me the name of any witness outside of this man Cole, that has been brought to your attention, and your memory refreshed, can you give us the name of any other witness or witnesses that appeared before you in that time?

A. I remember a young chap by name of Rankin, I believe appeared before us.

Q. Did you make a list of the witnesses in your record?

A. I think they are.

Q. Now, I am going to ask you—I will show you that list, and you won't find any Rankin there. And here is the transcript that was brought here with a list of the witnesses, you won't find any Rankin there.

A. Well, that length of time,—as I say, I am not keeping things like that in my mind forever.

Q. After looking at that record, you are mistaken when you say Rankin came before you?

877 A. Absolutely.

Q. Rankin was mentioned as one of the people who had built a still or operated it, don't you remember that? You do now?

A. I do now.

Q. So the evidence was presented to you concerning Lincoln Rankin?

A. Yes, sir.

Q. And Rankin himself was not called before that Grand Jury, was he?

A. Absolutely not, according to my record.

Q. You can't recall him now, from your recollection, whether you had a good case or a weak case against Rankin, can you?

A. Against Rankin, I don't know if we had a case against Rankin.

Q. Could you tell me whether you had a case against Dewes?

A. I think so.

Q. What was the evidence against Dewes?

A. To the best of my knowledge, that he was one of the workers in the distillery.

Q. And who furnished that information to you?

A. The District Attorney.

Q. Well, didn't you go by what the witness said, what witnesses told you Dewes was a worker in the case?

A. It was from one of the Government agents, or District Attorney, I don't remember that.

Q. Did any witness say that?

A. I say I don't remember which one that was told us that.

Q. You said it was either the Agent or the District Attorney. Might it have been one of the witnesses?

A. No, I know it was not one of the witnesses.

Q. Well, you wouldn't indict somebody on the statement of an Agent, would you?

878 Mr. Ward: I object to that, your Honor. It is improper cross-examination.

The Court: Why wouldn't he? No reason why he ought not.

Mr. Stewart: I want to get his knowledge of it, Judge.

Q. Now, you say before Cole was called in before you, Mr. Glasser made a little talk to you concerning his personal history, that is, Cole's?

A. That is right.

Q. Do you remember what that personal history was, as outlined to you by Mr. Glasser before they called Cole in?

A. As I said before, it was relative to his physical

condition, having some wound from the service, and having been in the hospital, and something of that nature.

Q. Did you tell us now, all that you remember?

A. Yes.

Q. And can you tell us in what order Cole was called, was he your first, your second, or in the middle, or your last witness?

A. Oh, he was somewhere in the middle.

Q. Somewhere in the middle. Did Mr. Glasser tell you that while the witnesses were outside, about Cole and his mental condition?

A. Yes.

Q. He didn't tell you that in the presence of Cole, did he?

A. No, sir.

Q. He didn't tell you that in the presence of any witnesses?

A. No.

Q. So the proceedings were interrupted to that extent that Mr. Glasser told you what he knew about Cole?

A. That is right.

Q. And then he went and called Cole in so you could get a look at him?

A. That is right.

879 Q. You did get a look at him, didn't you?

A. Yes.

Q. Do you remember now what he looked like?

A. Not offhand, no.

Q. He didn't impress you as a man of a strong mentality, did he?

A. No, I don't believe, if I recall, he gave any particular strong mentality appearance.

Q. Do I refresh your recollection when I tell you that Mr. Glasser told you that Cole was subject to seizures and convulsions?

A. I think that was brought out also.

Q. He told you that, and he told you the man was unreliable, because he would tell one thing one time, and another thing another time. Do you remember he told you that?

A. Yes.

Q. Did you have any reason or doubt as to the accuracy of Mr. Glasser's information concerning Cole's condition and his previous condition?

A. No, we had no reason to doubt it.

Q. And when Cole came in there did you see anything about Cole that helped you form an opinion concerning Cole?

A. No.

Q. Didn't you notice his appearance?

A. No, he appeared like a normal man. Perhaps if you wanted to make an opinion as to a man's particular mentality from his facial expression, outside of that, he looked like a normal man.

Q. Is your memory of his appearance one of a normal person?

A. Yes.

Q. Don't you remember he has a very bad scar on him?

A. I don't remember whether he has or not.

Q. Don't you know he has a glass eye?

A. No.

880 Q. You have forgotten all about what he looks like, haven't you?

A. I forgot all about his looks.

Q. You have forgotten all about how he looks, haven't you, since?

A. Yes.

Q. Did your Grand Jury make a report to the Judge after you were finally through?

A. We did.

Q. Did you sign it?

A. According to the requirements, yes.

Q. You never complained to anybody about the conduct of the District Attorney, or various District Attorneys appearing before you, did you, when you were on that Grand Jury?

A. The only time we complained was, we wanted Mr. Glasser brought back so we could reconsider the case.

Q. And he came, didn't he?

A. He did.

Q. And he answered whatever questions you had to ask, didn't he?

A. He did.

Q. At that time did he bring witnesses too?

A. I believe he did.

Q. Do you know the names of any of them?

A. No, I don't.

Q. And were they the same witnesses you heard before, or different witnesses?

A. Practically the same.

Q. And then, I notice on here, you keep a record of the votes, on your record?

A. That is right.

Q. Each man had a right to vote as he viewed the thing, did he not?

881 A. That is right.

Q. And it was not always unanimous, was it?

A. No.

Q. And what you did was vote according to your best judgment?

A. Right.

Q. As far as you could observe, that is what the rest of the gentlemen did?

A. That is right.

Q. How many times was Mr. Glasser before you during the time the cases were being presented?

A. I wouldn't know unless I looked over the record.

Q. Would you know how many cases he presented to you, without looking at the record?

A. I would not.

Q. Would you know the name of any other District Attorney that appeared before you, without looking at the record?

A. Oh, I might have two, Mr. Ward—

Q. What case did he present?

A. That I don't remember.

Q. What was the nature of the case?

A. I don't remember.

Q. What was the nature of the case?

A. I don't remember.

Q. Well, I notice on your record there was a case against Langher, L-a-n-g-h-e-r, conspiracy to defraud the United States. Mr. Ward, and then there is this notation, "Not Complete, withdrawn by Mr. Ward." Does that bring that back to your mind?

A. I believe there was a case that was withdrawn.

Q. And do you know why it was withdrawn?

A. To the best of my knowledge, from the fact other information had developed which they thought would bring other evidence better for another Jury.

882 Q. You had no objection to that action, did you?

A. No.

Q. And you were willing to rely upon Mr. Ward that was the proper thing to do under the circumstances?

A. That is right.

Q. Mr. Glasser had presented other alcohol cases, had he not?

A. I believe he had.

Q. And did he show you pictures in any cases?

A. I think in one or two other cases he did.

Q. Tell me the name of one of them?

A. I don't remember.

Q. Tell me the results, whether there was indictment or a No Bill?

A. The record would have to show.

Q. You wouldn't know, would you?

A. I wouldn't know.

Q. Did anybody in the Jury Room ask to see pictures in this Kaplan case?

A. I don't believe they did.

Q. And isn't it a fact that when Mr. Glasser would examine a witness, he would turn to you gentlemen and say, "any questions?" Or, he would do that, wouldn't he?

A. That is right.

Q. And if you had any questions, you were free to ask them?

A. That is right.

Q. So you didn't see Mr. Glasser interfere with you in any way, did you?

A. He didn't interfere, no.

Redirect Examination by Mr. Ward.

Q. Now Mr. Ellis, when an Assistant United States Attorney comes into your Grand Jury Room, your 883 Jury more or less listens to what he has to say, that is true, isn't it?

A. That is right.

Q. And you sort of look to him for guidance, do you not?

A. That is right.

Q. Now, when Mr. Glasser came in, in this case, did he detail to you or give you a statement before he started to call any witnesses, giving you a bird's eye view in this Spring Grove violation?

A. I don't remember whether he did or not.

Q. All right. But you do recall Mr. Glasser's spending considerable time telling you about Mr. Cole's deficiencies, do you?

A. Yes, sir, I remember him telling us all about it before he brought him in.

Q. And do you recall considerable time being spent by the Jurors questioning and trying to find out about a load of alcohol which had been taken from the still to Detroit?

A. Yes, we discussed that, that was brought up, bringing alcohol from some of—Mr. Cole's place in Fox Lake, and up to Detroit.

Q. Do you remember a man named Pregenzer, who was called before the Grand Jury and who refused to sign an immunity waiver?

Mr. Stewart: Why should Mr. Ward tell him about it? Ask him first. I think we have a right, I think we are entitled to have the Jury see this man has not much memory about it.

Mr. Ward: Let the Jury determine that.

The Court: Let me ask you a question. When Mr. Glasser appeared before your Jury did he submit to you a report that he had obtained from any of the agents?

The Witness: A. He had a report with him.

Q. Did he give it to the Jury to examine?

A. No.

Q. Did he ask this man Cole anything about any interest Mr. Cole may have had in that still?

A. No.

884 *Recross Examination by Mr. Stewart.*

Q. Well, did Mr. Ward submit a report to you and hand it to you in the case he was in there on?

A. No, he didn't.

Q. You know as a matter of fact, that the Assistants don't do that, don't you?

A. No, I don't know it to be a fact.

Q. Well, they didn't do it when you were on the Grand Jury, did they?

A. In several cases, yes.

Q. Handed you a report?

A. Had the reports there for anybody, they could look at them.

Q. What Assistant did that?

A. I don't remember. If I think—if I might recall, Miss Bailey showed us records on some of those narcotics cases that she presented to us.

Q. Is that all you remember about that?

A. Well, that answers the question.

Q. What is that?

A. That answers the question, that the records were shown to us.

Q. Have you any feeling against us on our side of the case?

A. I have no feeling, whatsoever, I want fair play to every man.

Q. And when I was asking you if you remembered anything about the names of witnesses, you told me no, without the record you didn't?

A. Yes.

Q. And then when Mr. Ward takes you, he said you remember Mr. Pregenzer coming before you and refused to sign an immunity waiver, you said you said yes?

A. I said nothing. I did not answer that question.

Q. Well, you don't remember that, do you?

A. I remember one man refusing to sign an immunity waiver.

885 Q. But you don't know his name?

A. I am not positive of his name.

Q. Do you remember what he looks like?

A. No.

Q. Do you remember whether he was a big man or little man?

A. No.

(Witness excused.)

E. L. GATES, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is E. L. Gates, I live at Wheaton, Illinois, I am county superintendent of highways, I was the foreman of the Federal Grand Jury for May 1938. Mr. Ellis was the secretary. I saw the defendant Glasser before our Grand Jury. I recall a case he presented. It was known as the case of a still I believe at Spring Grove, and another case of an alcohol case, but I don't remember the circumstances.

Q. Will you tell the Court and Jury your reasons for remembering that particular case?

Mr. Stewart: I object to that. That is a matter of cross-examination.

The Court: Overruled.

The Witness: A. Well, I remember it, because we didn't get very far with the case, and it was evidently a large still, and in particular a case of a party by the name of Cole, I can remember before us, and the Jury was not satisfied.

I believe we asked Mr. Glasser to bring back some more evidence, or some more witnesses regarding this case, which I think he did.

The way I remember it when he presented it, he told us regarding the case, before he had any witnesses, and the witnesses that he brought in, I remember the parties 886 that I believe rented the building, or the distillery, I don't know as they knew it at the time, but I know that we were not very well satisfied, because it seemed to be hurried, and there were several remarks made by the Grand Jurors regarding it.

Q. Now do you recall voting a no-bill in the case of Dewes, Louis Kaplan and Victor Raubunas.

A. I believe that is what we did.

Q. As foreman of the Grand Jury did you ever seek the advice from the Assistant United States Attorney regarding the cases that were being presented to you by him?

A. Yes.

Q. And when you were instructed by the District Judge before the commencement of your service, do you recall the District Judge saying anything to you, that you have a privilege if you desire—

Mr. Stewart: Just a moment. Here is my objection, Your Honor. Why doesn't he ask the witness "What do you remember, and what the Judge told you", rather than have Mr. Ward tell him?

Mr. Ward: He was told a lot of things.

The Court: That wouldn't be quite so easy.

Q. At the time of the Jury, before you heard any testimony submitted by the District Attorney, the Judge administered an oath to you and the Grand Jury?

A. He did.

Q. And I suppose he told you to perform your duties according to that oath?

A. Yes, sir.

Q. Or may have given you some other instructions?

A. I don't think there were any other.

Q. Practically all was based upon the oath as a Juror?

A. Yes, sir.

The Court: All right.

887 Mr. Ward: Now at the conclusion, or, while the hearing of the Kaplan and other case was on did you discuss the case with Mr. Glasser before you voted a No Bill?

A. I don't think so.

Q. Do you recall?

A. I don't think so.

The Court: For my information on that presentation, on that still, those who were No Billed, let me have that.

Mr. Ward: The Defendant Louis Pregenzer.

The Court: I want now the ones who were indicted.

Mr. Ward: Louis Pregenzer, Lincoln Rankin, Ralph Boguch.

Mr. McGreal: That is B-o-g-u-e-h.

Mr. Ward: Joe Cole.

The Court: The witness who was on the stand here.

Mr. Ward: Yes, sir. Stanley Selsure, S-l-e-s-u-r-e, and also had the name of Stanley S-h-e-s-u-r-a-i-t-i-s, Shesuraitis.

The Court: Who were No Billed?

Mr. Ward: No Billed, Louis Kaplan, Victor Raubunas and E. R. Dewes.

Q. Have you any recollection of the testimony which was presented to your Grand Jury regarding the Spring Grove still?

A. Yes, I have.

Q. Will you tell us what testimony was presented, as you recall it?

A. Well, I believe in the first place it was described to us in a general way, and then the witnesses who rented the building were brought in, Mr. Cole and the other witnesses, and I believe the Investigator for the Government made a report.

Q. Do you recall how often that case was presented to you?

A. No, I do not.

The Court: Do you recall if it was presented more than once?

A. I think it was two or three times.

Mr. Ward: Q. Can you recall the reasons why that happened?

888 A. Well, I think the Jurors were not satisfied, and asked for some more information, and I think they received it. I know that some of the Jurors wanted to get Mr. Cole back, they thought he knew more than he told us. That was what they assumed.

Q. Did you talk to Mr. Glasser about that?

A. I don't think we did.

Cross-Examination by Mr. Stewart.

At the time we wanted to call Mr. Cole back was at a time when Mr. Cole was before us twice at that same session. As I remember it, we didn't get much from Mr. Cole. He acted as though he didn't know very much about it, and didn't care to tell us about it. We had already heard from Mr. Glasser an outline of the proof by these various witnesses, including Mr. Cole. We were not satisfied with the information we received from Cole. I believe we requested he be brought back again. I think we discussed the matter afterwards when he was not brought back. I don't remember whether he contradicted himself the second time over the first time or not. We were not satisfied with him as being a reliable witness. We assumed that this was a large still. That is a flagrant violation. It was our desire to indict all of those that were connected with it. We were principally interested in indicting those who might be the owners. We wouldn't indict anybody as an owner unless we had evidence. We wanted evidence and if we didn't have the evidence, we would nobill. And in seeking evidence we wanted evidence that would stand up in court. I believe we were told that by Judge Wilkerson.

I don't remember particularly Mr. Cole's personal appearance. I think he was a small man, I know he had several operations for mastoid, so we were told.

I was here for a little while while you were examining the secretary, Mr. Ellis.

889 It is my recollection we had a board with the names of the people on that they expected to indict, and they put them there for our convenience. I suppose there were a number of them, and some of the names are kind of hard to remember. I don't know whether Mr. Glasser or the agent put the names on the blackboard. It was either one of the two. I understood that was an outline of what they expected to be able to prove. I don't remember that who-

ever did the chalk work told us he was going to put the names down in the order of their importance, in connection with the operation of the still. I don't know who was put down in the number one position. I wouldn't know it, I wouldn't undertake to remember. I believe that Kaplan and Dewes and Raubunas were some of the names on the black-board.

I knew, as Foreman, that the District Attorney could not order me to vote on any particular day. I knew I was under the jurisdiction of Judge Wilkerson. I was told by Judge Wilkerson that if I had any problem or question I should come in and consult with him. I didn't at any time go in and complain to Judge Wilkerson about the conduct of any District Attorney. When this case was presented to us, Mr. Glasser would ask after each witness was examined, if we had any questions, I think we did have some. We were invited by Mr. Glasser to take part in the investigation.

When the original chalk talk was made either by Mr. Glasser or the agent, it appeared that they were operating their case as they understood it.

I have no independent recollection now, concerning the evidence that was presented against the various defendants. If you picked out Stanley Slesur for instance, I could not tell you what witnesses furnished evidence that he was connected with the still. I wouldn't say Cole was not reliable. We didn't think we were getting all of the truth out of him. That would make him unreliable in a way. We were not going to indict a person on what we guessed to be the truth. I believe our vote was unanimous in practically all the cases we had.

890 Q. Do you recall whether you examined this witness?

A. I think I did.

The Court: Did you ask him any questions?

A. I believe I did.

Q. This man Cole?

A. I believe I did. I think the transcript will show it.

The Witness: I don't remember what the questions were, but I think I asked him. I was interested in finding out about the still and the people who were operating it. I examined him concerning whatever knowledge he may have concerning that still. After I did that and he went out of the room some of us were dissatisfied with the way he answered his questions. And we thought

then, if he were brought back in again, of more questions to be asked. We requested Mr. Glasser to have him brought back in, and he was brought in. And then some more questions were asked him about the still, or whatever knowledge he might have on it. Then after we got all through with all of this deliberation and the examination, the witnesses and everything, we used our best judgment as to who to indict and who should be no-billed.

Redirect Examination by Mr. Ward.

Q. You know when you were Foreman, when a man was brought in before a Grand Jury that the Assistant United States Attorney intends to indict, that he must get an immunity waiver from that man before he can be indicted. Did you know that man before he can be indicted. Did you know that?

A. I know it from experience in the Grand Jury. That is, I was told that.

Q. Do you know whether or not Glasser obtained an immunity waiver from Joe Cole before he started to testify before that Grand Jury?

A. I suppose he must have, I don't know.

Q. I see. But you don't know anything about that?

891 A. No, sir.

Q. If I was to tell you he didn't, you would be surprised, wouldn't you?

A. Yes, sir.

Q. And do you recall him getting an immunity waiver from a man named Joe Pregonzer or Louis Pregonzer?

A. I remember the name of Pregonzer, and there was one party before us who would not sign. I don't know whether that was the party or not.

Q. Wouldn't sign what?

A. The immunity waiver.

Q. Now, the Assistant United States Attorney goes about his business in that Grand Jury Room, and he examines the witnesses before you, and you listen and hear the evidence, that is true, isn't it?

A. That is right.

Q. And if there is an amount of evidence sufficient to satisfy you there is probable cause, you vote an indictment, don't you?

A. That is right.

Q. What evidence the District Attorney has in his possession that he does not bring to you, you know nothing about, do you?

A. We do not.

Q. Now, the pictures of this Spring Grove still, do you recall them being shown to you?

A. I do not.

Q. Do you recall at any time Mr. Glasser presenting these pictures to the Grand Jury and telling them about that being the still?

A. No, I do not.

Q. Do you recall a witness before that Grand Jury identifying a picture of Louis Kaplan?

A. I do not.

Q. You don't remember that?

A. No, sir.

Q. Do you remember any witnesses testifying about Louis Kaplan?

892 A. I can't recall anyone.

Q. But there was a Court Reporter there, taking down a record, was there not?

A. That is right.

Q. And you made no notes, did you, while you were acting there, you made no notes, no pencil notes?

A. I wished I had.

Q. But you didn't?

A. I did not.

Q. Now, this is in evidence, Document 113, purporting to be a report from the Alcohol Tax Unit regarding investigation which was made involving the Spring Grove still. Did Mr. Glasser ever show that to you men and let you look it over and read it and go through it before you voted on your Bill?

A. I don't remember of seeing this, no, sir, I don't remember of seeing this.

Q. Do you remember the Grand Jury being asked—Do you remember the Grand Jury asking quite a number of questions about a truckload of alcohol that started out from Fox Lake and finally ended up in Detroit, Michigan?

A. Yes, sir.

Q. From Spring Grove. And did quite a few of the jurors participate in questioning witnesses about that load of alcohol?

A. I think they did, yes sir.

Recross Examination by Mr. Stewart.

Q. I am going to read from a record we have here first let me ask you—you don't have any independent recollection concerning various cases and the names of them and what Assistant United States Attorney presented them, you don't have that memory, do you?

A. No, I know that Miss Bailey presented the narcotic cases and other attorneys brought in different cases, 893 that is all I remember about it.

Q. Well, if you will listen please, see if this will refresh your recollection: John James Pecka and Earl R. Peterson, Section 207, Title 18, United States Code. Bribery, presented by Mr. Ward, 51338. Witnesses A. Thompson, H. A. McTavish, a True Bill, 51332,—23 votes. And then this notation, 6/3, that is June 3rd, 1938, reconsidered and re-vote taken, and No Bill returned at this day, at the request of Martin Ward, Assistant District Attorney. Now do you remember that happening where you voted an indictment against somebody, and then Mr. Ward came before you and requested you to return a No Bill?

A. We might have done it; the record will show it. I don't recall.

The Court: I think you should have the record to show that.

Mr. Stewart: We have it here. Maybe this will help you. This will show it.

Mr. Ward: I think I could tell him all about that case.

Mr. Stewart: When he volunteers remarks, can I answer them?

The Court: No, I think he has responded to my suggestion.

Mr. Stewart: Because the other time when he told on me, he said something too the Judge didn't hear.

The Witness: There must have been some good reason for it, or he wouldn't have had 23 good votes to withdraw it.

Mr. Ward: I didn't hear that.

The Witness: There must have been some good reason for it, or there wouldn't have been 23 good votes to withdraw it.

Mr. Stewart: Q. But the record does not bring the case back to your mind?

A. It does not.

Q. I notice,—I don't want to take the time with all of these things, but Mr. Glasser's name appears in a large number of cases where True Bills were voted. Do you remember Mr. Glasser was before you in a large number of cases?

894 A. I wouldn't say a large number. Well, let's count them up, here.

Mr. Ward: The Government does not dispute that Mr. Glasser secured a great number of True Bills, we admit that.

Mr. Stewart: Well, before this particular Grand Jury.

Mr. Ward: Well, before this particular Grand Jury. Any jury you want to pick.

The Court: All right.

(Witness excused.)

MRS. MAE JURKAS, called as witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Mae Jurkas, I live in Joliet, Illinois, for a year and a half. My husband's name is Tony. In 1937 I lived at 6309 Eggleston Avenue. In January of 1938 they raided the basement of our home. Exhibit 126 is a picture of the place where we lived. There was a still found in the basement, and my husband was arrested, in January. I have met the defendant Glasser. That was the next day after they raided the place. It was in the United States Attorney's office. I had a conversation with him. He came in there with my husband, and he asked me if I wanted my husband to go home. And I said "Why yes, we need him at home." And he said "Well who was the man that owns the still in the basement?" I says "Well, I don't know where I could find him just then. I knew he lived in Gary, Indiana, but that is all I know about him." He said "Do you think you could find him?" I said, "I could try." He thought for a while, and he said, "You go home and come back in one week from today, and if you have found him, let me know." We went home, and we went back a week from that day, and he asked me if I had found him, and I said

"No, he has not been around." So he told us to go home and he would give us a card, and he said, "If you ever run into him, call me up at this number." We went home and that was all we heard of the case until later.

I don't know what size still was in the basement. I didn't even see it. I never went down there. It was in there I would judge, say about three months altogether.

Q. Now, at that particular time did you know this man (presenting photo to witness?)

The Court: Is that the picture of some man?

Mr. Ward: Nick Girardi.

The Witness: That does not look like him, but I know him. I know the name.

Mr. Ward: It is not a good picture of him?

A. It sure does not look like him to me, because I know him very well.

Q. Is there anything about that that looks like him?

A. I wouldn't say it looks like him.

Q. About how old was Nick Girardi?

A. I don't know how old he was.

Q. Do you know a man named Tishman?

A. Yes, I know him.

Q. What is his first name?

A. I don't know.

Q. Sol?

A. I can't say. I knew his name. I only know his last name.

Q. Do you know what Girardi's business was?

A. He run a sugar place, selling sugar.

Q. After you left Mr. Glasser's office did you go to see Mr. Girardi?

A. Well, I went to see him before I went up the first time to Mr. Glasser's office. I went in the morning.

896 Q. Why did you go to see Mr. Girardi?

Mr. Stewart: I object.

The Court: Overruled.

The Witness: What was the question?

Mr. Ward: Tell the Court and Jury why you went to see Mr. Girardi, Nick Girardi?

A. Well, two agents came there and wanted me to sign a statement that I bought this sugar at Nick's. I didn't want to. I was kind of afraid on account of the children and myself, so the next morning I went up to see him in the restaurant, and I told him.

Mr. Stewart: I object to any conversation.

Mr. Ward: You told him?

Mr. Stewart: No, I object to any conversation.

Mr. Ward: You had conversation with him?

A. I had a conversation outside of the restaurant.

Q. And how long did that conversation last?

A. Oh, about five minutes.

Q. Where did you go after that?

A. Went down to the office, here to Mr. Glasser's office.

Q. And did you have another talk with Glasser after talking with Girardi?

A. Well, right after that, yes, sir, I first went to see Nick before I ever seen Mr. Glasser.

Q. Oh, before you came to see Glasser at all you went to see Nick Girardi?

A. I seen Nick, yes.

Q. Then this was after you had this conversation with Nick you came down and talked to Glasser?

A. Yes, sir.

Q. That conversation you have related?

A. Yes, sir.

Q. Now did you have any other conversation with Glasser?

897 A. That was a week later. After we went to see Glasser we went back to Nick's.

Q. Went back to Nick.

A. He told me I should go down, and then we went back to Nick's.

Q. Just a minute. While you were with Mr. Glasser did you tell him that you had been to see Nick Girardi?

A. No, I never mentioned Nick's name to him.

Q. Then after you talked to Glasser did you go back to see Nick Girardi?

A. Yes, I did.

Q. And did you have a conversation with him?

A. Yes, sir.

Q. After that—how long did that conversation last?

A. Well, no more than ten minutes.

Q. And after that, where did you go?

A. Went home.

Q. Now, you say you know Nick Girardi well. When and where was the first time and place you ever met him previous to that?

A. I met him right up at his store there.

Q. Well, you were buying sugar from him?

A. From him, that is how I met him, through another fellow.

Q. What store are you speaking of?

A. I wouldn't know the name of the street, I know where it is at, but I don't know the name of the street.

Q. You know the sugar was coming from Nick Girardi's place for the still, you knew that, didn't you?

A. I knew that, yes.

Q. Now, how much sugar did you buy from Nick Girardi?

A. I wouldn't know, all together was about eight bags at a time.

898 The Witness: That sugar would be taken into the place there. I delivered the sugar. I got it in the car.

About a year later, that is May 19, 1939 my husband was indicted for possessing that still, and convicted.

Previous to January, 1938 we had been living about a year in Chicago. We came in from Oklahoma City. I wouldn't know how long a period of time I was going to Girardi's and getting that sugar. It was off and on, because they didn't have it going on account of warm weather, and they stopped it. Something was wrong up there, so they stopped it. And it might have been about three months before January 19, 1938 that I kept going. I wouldn't know anything about how much alcohol was put out a day. I seen the cans, but I never counted them. I never carried them out. I didn't receive any money from the sale of the alcohol. We were getting a dollar a day, from this fellow that owned the place down-stairs. He paid the rent, the gas and electric light bills, and we were getting a dollar a day.

Q. And you were getting and hauling the sugar from Nick Girardi's to your house, and your husband was working in conjunction with that, and you were only getting \$1.00 a day, is that right?

A. Well, we got our furniture.

Q. Who gave you that?

A. He gave us that.

Q. Who?

A. Jack Clementi, that is all I know him by. He gave us the furniture and a dollar, and \$10.00 a week I got for hauling the sugar.

Q. Anyway, your husband was convicted for having that still?

A. Yes.

Q. Before Judge Holly?

A. Before Judge Holly.

Q. That picture, for the purpose of the record, that I show the witness is Exhibit Number 119.

893 The Court: Can you describe the appearance of Nick Garardi at that time?

A. He is about as tall as I am, and heavy-set.

The Court: Heavy-set?

A. Heavy-set fellow.

Q. What would you say his weight was?

A. I would say it was close to 200 pounds.

Mr. Ward: How tall are you?

A. Five feet, two.

The Court: About how old a man was he?

A. I would judge him to be about forty?

Mr. Ward: But it is the same Nick Girardi that was in the sugar business with Sol Tishman?

A. I know the both of them.

O. All right.

The Court: At the time you saw Mr. Glasser you knew him?

A. Yes, sir.

Q. You knew he was the man that furnished you with the furniture?

A. Yes, sir.

Q. Did you tell Mr. Glasser who he was?

A. I told him everything.

Q. Oh, you told Mr. Glasser?

A. Yes, sir, I told him just the whole story, how we came in from Oklahoma City, and had no furniture, and he gave us the furniture, if he could put the still in the basement, I told him everything.

Q. You gave him the man's name?

A. Even the man's name.

The Court: Any further questions?

The Witness: Exhibit Number 122 is the front of the premises, 123 is part of the equipment after it was destroyed, 124 I guess looks like it, I never seen it up. That is the still, I never saw it in operation. I knew it was being operated. I got the odor from fermenting 900 mash.

Cross-Examination by Mr. Stewart.

I have three children, I told Mr. Glasser that when I came up here from Oklahoma I was quite broke. This man who owned the still, and who paid our rent and helped us get our furniture got us together again, and we did that because it helped us to live with our family. I told Mr. Glasser that. I gave Mr. Glasser all the information I could about the man who owned the still, including his name and description, but I didn't know where he lived, all I know he lived in Gary, Indiana, that is all I know about it. I was not able to give Mr. Glasser any further information about where the man could be found. Mr. Glasser told us he would let us go if we would help him in locating that man. He told us he was interested in the owner of the still, rather than us poor people, who were running it.

(Witness excused.)

TONY JURKAS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Tony Jurkas, I live in Joliet, Illinois. I am the husband of Mae Jurkas. I was indicted on May 19, 1939 for possessiong a still on Eggleston Avenue, in January 1938. I pled guilty in that case and was placed on probation by Judge Holly. I was in that still between three and six months. It was 150 gallon still, I was working in connection with it. I never worked down in there, I never operated the still. I knew it was down there. I got \$25.00 or \$30.00 a week. John Clementi paid me. I first met John Clementi when we came from Oklahoma, he promised me a home. I met him in a saloon on 107th and Michigan. He got us furniture and got us together and started putting in the machinery. I was there when 901 he put it in, sometimes. He was a fellow about five foot nine, pretty heavy. Italian. I used to see him now and then, he gave me the money to rent the place. When I met him, he told me if I had a family of kids, he would get the furniture, and move me in a house. I was peddling a few cigars at the time that I met him. I

had no place to live at that time. I was there when they delivered the furniture, about three rooms. He picked out the house, he found the house for me, I was with him when he picked it out. A couple of weeks later a couple of fellows moved the still in. My wife lived there with me. She got caught hauling sugar once. She got that sugar from Nick Girardi, I had met him a couple of times over where he had his sugar store, his place of business, some place on Market Street.

(Witness excused.)

ABRAHAM H. COHEN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Abraham H. Cohen, I live at 5059 Ellis Avenue, I am a lawyer and alderman of the 4th ward, Chicago. I have been practicing law in the City of Chicago eighteen years.

I have known Adam Widzes since the winter of 1937, he was a client of my brother's. He had called our office and after that call I came to the Federal Building and after I was there about three hours I went to Mr. Glasser's office and had a conversation with him. I asked Mr. Glasser if he would not be kind enough to call, to find out if Mr. Widez was coming over to appear before Commissioner Walker. He extended that courtesy. I knew at that time that Widez was in custody for some Federal offense, and I found out, I think from the lady attendant, in Commissioner Walker's court-room that he was 902 in charge of those cases. The only thing I said to

Mr. Glasser was that I had been around here three or four hours, waiting for Mr. Widzes to come over to appear on arranging bail before Commissioner Walker. I asked him if he would not please extend me the courtesy and call up and find out if he would not come over. He said he would, and apparently he did, because Mr. Widzes came over, I should judge, about a half hour later. Later I appeared before the United States Commissioner for the purpose of arranging bail for Adam Widzes. I did not do it at that time. I did not obtain some bondsman. I was in the building about an hour or an hour and forty

five minutes. Mrs. Widzes was with me, she came down to identify Mr. Widzes to me. I did not know him. She had retained me for him. They called the office and mentioned it to my brother, whom he knew. I did not know the gentleman, I believe that Commissioner Walker at that time gave us a date, I am not sure. I then returned to my office with Mr. Widzes. Subsequently I returned to the United States Commissioner regarding the Widzes case, that was the next day. Mrs. Widzes told me they could not make that bond, it was too large for them. I spoke to Mr. Glasser and asked him if he would not extend courtesy again. I told him the circumstances of this defendant, from what I found out from Mr. Widzes, and his wife, that they could not make that kind of a bail. He did. He went with me to Commissioner Walker's Chambers, and there told Mr. Walker in substance what I told him, and Commissioner Walker thought over the matter and said he would reduce the bond, and if I am not mistaken he reduced it \$500.00 or \$1,000.00.

Mr. Ward: I think the record will show it was reduced from three to two thousand dollars.

The Witness: Of my own personal knowledge I don't know if Widzes was released on bail. After the bond was reduced I went to the marshal's lockup and spoke to Mr.

Widzes. Then I left the building. On the day set 903 for the preliminary hearing I came over to the building and had a conversation with Widzes. And after that conversation, I returned immediately to my office. And took no further part in the Widzes case.

Subsequently Mr. Glasser called me on the phone and told me to come over to the District Attorney's office, I think we made a date and I went over to his office. It was shortly before Christmas. When I came in I said hello and he said hello to me. He got up from his desk and we walked, we waiked out toward, I believe, Warren Canaday's office, Mr. Glasser had said that somebody had said that I did not know that the reason I got out of the case, or something like that, there was a fix. I told him that was not true, never said this, that I had said that this was why I was released, or something like that, I don't remember the exact words. The Widzes case was the only case I had. I told Mr. Glasser there was no truth in me saying anything like that, because I did not say anything like that.

The Court: Did you tell him why you got out of the case?

A. Yes, I did. I told him I believe my client did not want me, Judge.

Cross-Examination by Mr. Stewart.

Q. That is a pretty good reason, isn't it?

A. I think so.

Redirect Examination by Mr. Ward.

Mr. Ward: Look at No. 128 and read it to yourself, and tell us whether or not that correctly states what occurred in Mr. Glasser's presence and in your presence, and in Mr. Canaday's presence in the United States' Attorney's office on the date it bears.

Mr. Stewart: Your Honor, is this redirect examination after my long cross-examination?

904 Mr. Ward: If it is not, I will ask leave to make it part of my direct examination.

The Witness: That is true. I signed it. I dictated it and the girl put it down. I dictated it in the presence of Mr. Glasser and Mr. Canaday.

Mr. Ward: Now, I will ask leave to read this as being the statement which Mr. Glasser asked this man to make, which he signed in his presence and at his request.

The Court: All right.

Mr. Stewart: Your Honor, my objection is, that it just encumbers the record, but it is plenty encumbered now. He might as well read it, but read it fast.

(Here exhibit 128 was read to the Jury by Mr. Ward.)

(Witness excused.)

LINCOLN RANKIN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is Lincoln Rankin, I live at Pell Lake, Wisconsin, for the last nine years. I am 26 years old. Pell Lake is about fourteen miles from Spring Grove, Illinois. I know Stanley Slesur, Ralph Boguch, Victor Raubunas, Louis Kaplan, Norton Kretske, Tony Horton, Joe Cole

and Louis Pregenzer. I have known Cole about a year. I have known Kaplan, Boguch, Raubunas and Pregenzer about three years. I first met them at my father-in-law's farm, two miles north of Genoa City, Wisconsin. It was in the fall of 1937. I met Kaplan about two days after I started working for the bunch which was about two weeks before Christmas of 1937. A few months after that time I went to the Borden Wieland plant at Spring Grove. Stanley Slesur and Ralph Boguch took me to the Borden Wieland plant and told me to take care of the furnace, the boiler. I just kept the steam up. The lumber yard right next door to us delivered the coke, which was 905 used there. I knew alcohol was produced in that building, I would say about a 120—five gallon cans a day. On January 19, I was arrested in the building by Federal Officers, with Ralph Boguch, they took us to Woodstock, Illinois, to the jail, I remained there two days, and was brought to the Cook County jail, where I was brought down before Commissioner Walker, and got bond. Horton, the defendant, arranged my bond. I had never seen him before that time. After I got out we were told to go to a tavern on Kedzie Avenue, Louis Kaplan, Stanley Slesur and Victor Raubunas were there. Kaplan said we did not have to worry, he says "Everything will be taken care of, that they would post-pone the case until it got dusty, and would forget about it, drop it." I did not appear before the United States Commissioner again in that case. Subsequently I went to Kaplan's garage on Ogden Avenue when I first got notice to appear down here. I asked Kaplan what I should do. I had never been in trouble before and I did not know what to do. He said he would get Tony and will go down and see Kretske's office. After that we went to Kretske's office just I and Louis and my wife was along in the car. I did not talk to Kretske at all. I did not go back to see Kaplan after that. On June 1st, 1938 I learned about an indictment. I had to come down here. I was indicted again I guess. That was in connection with my work at the Spring Grove still.

Cross-Examination by Mr. Stewart.

I was getting \$25.00 a week for helping at the still. Stanley Slesur paid me. I worked there about three weeks. Before that I worked on a still at Wilmington,

that was owned by Stanley Slesur and I think, Tom O'Brien. I worked there about six months. That was while I was around in this trouble I had in the raid at Spring Grove.

Q. Now have you told us all the stills you worked on?

A. Yes.

906 The Court: Unless you want to, you don't have to answer these questions.

The Witness: I see.

Later on I was indicted in this District for that Wilmington still. That indictment is still pending. The indictment at Spring Grove is still pending. When I was arrested out there with Boguch at Spring Grove, I was caught right in the place, I knew at that time who the partners were in the still. I knew who I was getting my wages from. I did not tell the Government agents who I was working for. I did not tell them nothing. I told them somebody came over and took me to the still that day to give me a job from my uncle's farm, and I could not describe the man. All the time I knew who the man was. We were told to lie to the agents to protect our employer. That was part of my job. I knew I was working at something unlawful, and got a little more wages because of that. Part of my job was not to tell the agents who the employer was. When I was arrested, I stood up. Whatever I did tell them was just lies. I tried to protect myself, by telling them I had just come to work that night. That was not true. I did not want to tell them how long I worked there. Then bonds were arranged for me because the fellows I was protecting were on the outside trying to protect me. That is also part of the deal. After I got out on bond I saw Kaplan over in the saloon, he told me not to worry. He did not want me to get scared on account of that arrest, he was afraid possibly, I would tell the Government about him. He told me not to worry so I would feel I was being taken care of. The raid was on January 19, 1937, two days later I was brought before the Commissioner, the case was continued to January 26, and my bail was fixed at \$2500.00, and two bonds were given for Boguch and I. I first went to Kretske's office with Kaplan after I got my notice to appear in court here, I think it was around June 1, 1938. It was the same day that I came in court and pleaded not guilty. If the record shows that it was June 23rd, that is when it was.

907 I was in Kretske's office twice, I don't remember how long after the first time. I don't remember who was representing the Government when I was before the Commissioner. We waived examination before the Commissioner, that is what we were told to do. On the 26th of January. I don't remember if I was again indicted in 1939 or not. I remember coming down here on May 26 and being released on my own bond on that indictment. I don't know if that was at the recommendation of Mr. Ward, I don't recall that at all. I stood up about a year and a half. I started telling the Government what I know about the owners of the still about a year and a half ago. I was at my home when I started telling, Agent White. He used to stop in maybe once a month or every two weeks for about a year and a half. And during that time I wouldn't tell him anything.

Mr. Stewart: Mr. Ward, it will save us trouble in proving this, if you will agree he was released on his own recognizance with your consent?

Mr. Ward: Yes, sir.

Mr. Stewart: That is agreed, Your Honor. That is all.

Redirect Examination by Mr. Ward.

Louis Kaplan told me to go to the United States Commissioners, when we were at Kretske's office. The second indictment which is Exhibit 130 was a re-indictment of Exhibit 129, and that's the reason I was permitted to have the same bond stand for the second time that was put up for the first.

Recross Examination by Mr. Stewart.

I haven't got a lawyer now, I didn't have a lawyer when I signed my own bond.

Redirect Examination by Mr. Ward.

You never in any conversation I had with you promised me anything for testifying in this case.

908 *Recross Examination by Mr. Stewart.*

I am just hoping I am doing the best for myself, I never was in trouble before and don't want to be in again, if I can help it.

(Witness excused.)

164
124
Vol. III
TRANSCRIPT OF RECORD 469221
1.2

Supreme Court of the United States

OCTOBER TERM, 1941

No. 30

DANIEL D. GLASSER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 31

NORTON I. KRETSKE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 32

ALFRED E. ROTH, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 28, 1941.

CERTIORARI GRANTED APRIL 7, 1941.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. _____

DANIEL D. GLASSER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No. _____

NORTON I. KRETSKE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No. _____

ALFRED E. ROTH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

Index to printed record of proceedings in U. S. District Court	i
Clerk's certificate to printed record (without bill of exceptions)	138a
Clerk's certificate to volume I of bill of exceptions....	622a
Clerk's certificate to volume II of bill of exceptions...	1071
Index to proceedings in U. S. Circuit Court of Appeals:	
Placita	1073
Order of July 10, 1940, consolidating causes, etc...	1074
Certificate of Hoyt King, Clerk, U. S. District Court, to exhibits.....	1075
Supplemental certificate of Hoyt King, Clerk, U. S. District Court to exhibits.....	1093
Petition for order on U. S. Attorney to produce missing exhibits	1094
Answer to petition for order on U. S. Attorney to produce missing exhibits.....	1096
Reply to answer of U. S. Attorney for order to produce missing exhibits.....	1097
Additional answer of U. S. Attorney.....	1100
Order of Aug. 14, 1940, directing U. S. Attorney to transmit exhibits to U. S. Circuit Court of Appeals	1102
Additional assignment of error, filed in cause No. 7315	1103
Additional assignment of error, filed in cause No. 7316	1104
Additional assignment of error, filed in cause No. 7317	1105
Motion by U. S. Attorney to suppress brief of appellant Glasser	1105
Points and authorities in support of motion.....	1106

Affidavit of Francis J. McGreal.....	1108
Memorandum in support of answer to motion to suppress brief of appellant Glasser.....	1112
Order of Sept. 13, 1940, denying motion to sup- press brief of appellant Glasser.....	1116
Opinion by Kerner, J., filed Dec. 13, 1940.....	1117
Judgment as to appellant Glasser, affirming, en- tered Dec. 13, 1940.....	1139
Judgment as to appellant Kretske, affirming, en- tered Dec. 13, 1940.....	1140
Judgment as to appellant Roth, affirming, entered Dec. 13, 1940.....	1140
Petition for rehearing in cause No. 7315, filed Dec. 24, 1940	1141
Petition for rehearing in cause No. 7316, filed Dec. 24, 1940	1181
Petition for rehearing in cause No. 7317, filed Dec. 24, 1940	1189
Answer to appellants' petitions for a rehearing, filed Dec. 31, 1940.....	1211
Brief of Amicus Curiae, filed Jan. 4, 1941.....	1219
Memorandum in support of petition for rehearing of appellant Glasser, filed Jan. 7, 1941.....	1231
Orders denying petitions for rehearing, entered Jan. 23, 1941.....	1239
Praecipe for record on certiorari.....	1240
Clerk's certificate	1243
Verdict of jury filed March 8, 1940	1244
Orders allowing certiorari	1245

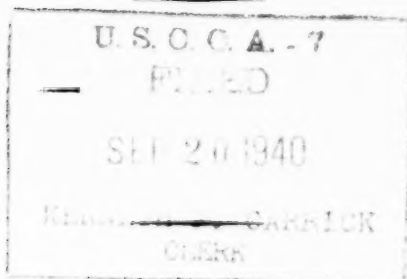
VOL. II. pp. 623 to 1069.
BILL OF EXCEPTIONS

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
7315 *vs.*
DANIEL D. GLASSER,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
7316 *vs.*
NORTON I. KRETSKE,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
7317 *vs.*
ALFRED E. ROTH,
Defendant-Appellant.



Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED JUNE 28, 1940.
PRINTED RECORD.

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

7315 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

DANIEL D. GLASSER,
Defendant-Appellant.

7316 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

NORTON I. KRETSKE,
Defendant-Appellant.

7317 THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

ALFRED E. ROTH,
Defendant-Appellant.

Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division.

INDEX.

BILL OF EXCEPTIONS.

(Filed June 27, 1940)

Motion of Defendants to Quash Indictment.....	141
Affidavit of Defendants in Support of Motion to Quash Indictment	143
Motion to Strike Motion to Quash Indictment and Affidavit	150
Reference to Order denying Motion to Quash.....	151
Argument by Mr. Ward on Demurrers filed by De- fendants	151
Petition of Roth for Reconsideration of Demurrer....	162
Petition of Roth for Severance	164
Petition of Glasser to Strike limitation of Bill of Par- ticulars, etc.	167
Reference to Defendants' Plea of Not Guilty.....	173
Notice and Motion of Kretske for continuance.....	173
Affidavit of Harrington	174
Motion of McDonnell, counsel for Kretske, for con- tinuance	183
Affidavit of McConnell	184
Petition of Frank Hodorowicz, Peter Hodorowicz and Clem Dowiat, for Probation in cause, U. S. A. v. Hodorowicz, et al., D. C. #31014.....	322
Exhibit No. 74—Report of Robert B. Ritter, Investiga- tor in Charge	406
Statement by Walter Kwiatkowski	412
Motion of Defendant Roth for directed verdict at close of Government's case	715
Report of April 1937 Grand Jury.....	789

Rule on E. C. Yellowley and Levi Z. Baker, etc. and Answer	1031
Motion of Defendant Roth for directed verdict at close of all evidence	1043
Motion of Defendant Roth to Strike Testimony of Alexander Campbell	1044
Reference to Verdict of Jury	1045
Affidavits of Defendant Glasser	1046
Article of American Bar Journal	1052
Affidavit of Defendant Roth	1057
Affidavit of Defendant Roth in Support of Motion for New Trial	1058
Motion of Defendants to Arrest Judgment.....	1059
Stipulation as to Exhibits	1066
Stipulation as to references to pages of Bill of Exceptions in Assignments of Error.....	1067
Order as to References in Assignments of Error.....	1067
Reference to Judgments	1068
Judge's Certificate to Bill of Exceptions.....	1069
Colloquy.....	160, 178, 373, 394, 445, 519, 539, 585, 678, 1060

PLAINTIFF'S WITNESSES.

Testimony of:

Abosketes, Nick	663
Annis, Clay B.	354
Bailey, Thomas	646, 706, 712, 1034, 1039
Brantman, William M.	650, 711
Campbell, Alexander	680
Campbell, Francis J.	444
Campbell, William J.	1041
Cloonan, Bernard B.	442
Cohen, Abraham H.	617
Cole, Joe	569

Connors, William I.	698
Del Rocco, Christ	242
Devereux, Walter J.	365
Dewes, Edward	537
Donahue, Patrick	357
Dowd, Victor J.	218
Dowiat, Clem	268
Dukatt, Harry	700
Ellis, Charles G.	588
Farber, Edward	689
Freedman, William	217
Gates, E. L.	603
Gentry, Clarence E.	1037
Gilbert, Edward K.	393
Goddard, Homer A.	249, 585
Halevan, Walter	265
Hodorowicz, Anthony	342
Hodorowicz, Frank	295
Hodorowicz, Peter	254
Jeffrey, Bess	704
Jurkas, Mrs. Mae	611
Jurkas, Tony	616
Kral, Charles O.	705
Kwiatkowski, Walter	408
Lancaster, Raymond L.	387
Lane, Edward B.	282
Lavelly, James W.	281
Meyers, Charles	441
Morgan, Gordon S.	186, 528, 705, 1038
McFarlin, H. Wilson	583
Newell, Edward T.	384
Ostrowski, Steve	248
Passman, H. L.	642
Passman, Peter P.	640

Pregenzer, Louis	582
Rankin, Lincoln	619
Raubunas, Victor	452, 713
Rossner, Clarence P.	277, 395
Schumacher, William E.	440
Sharp, Ralph	366
Simanello, Michael James	250
Slesur, Stanley	623
Stephenson, E. H.	713
Svee, Paul	556
Swanson, Elmer	225
Walker, Edwin K.	282
Wasielewski, Stanley	631
White, Frank L.	210
White, Sylvan R.	529, 587
Workman, William	197
Wroblewski, Edward	642, 674
Wroblewski, William	633

DEFENDANT GLASSER'S WITNESSES.

Testimony of:

Anderson, Daniel	823
Balaban, Henry L.	724
Barnes, John P.	717
Birnbaum, Benjamin	910
Blankenberg, Elsie	885
Bolton, Joseph	744
Chinnerello, Allen Joseph	1028
Cook, Hugo P.	745
Denk, Robert G.	829
Dignan, John P.	796
Eckstone, Sidney S.	784
Ettelson, Dr. Abraham	886

Glasser, Daniel D.	911
Hess, Edward J.	743
Igoe, Michael L.	890
Kaplan, Louis	722
La Rue, Victor E.	831
Snyder, Ralph	828
Weisbrod, Harry I.	783
Woodward, Charles A.	737

DEFENDANT KRETSKE'S WITNESSES.

Testimony of:

Balaban, Henry L.	724
Bayless, Samuel R.	1028
Bolton, Joseph	744
Eberhardt, Alfar M.	884
Gerhardt, Harold	736
Golde, Meyer	1029
Graber, Joseph A.	763
Haas, John F.	748
Hamlin, Harry F.	782
Hess, Edward J.	743
Igoe, Michael L.	890
Kaplan, Louis	722
Kretske, Norton I.	798
La Rue, Victor E.	831
Malloy, Patrick J.	1030
Robin, Samuel Martin	1029
Weisbrod, Harry I.	783

DEFENDANT ROTH'S WITNESSES.

Testimony of:

Adams, Harvey M.	763
Baker, Sidney	749
Berchern, Donald N.	796
Bornhorst, Frances	830
Clorfene, Irwin	890
Gilmore, Thomas B.	782
Gutgsell, Ralph J.	746
Kennedy, Herbert H.	783
Robson, Charles M.	889
Roth, Alfred E.	833

Testimony of:

Horton, Anthony J.	750, 765
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STANLEY SLESUR, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My correct name is Stanley Slesur, at the present time I am confined in the United States Penitentiary from where I was brought to testify. I was sentenced April 4, 1939 for the Spring Grove still. I know the defendant Glasser, he is the prosecutor. I know Norton Kretske. I could not know exactly what year I first saw him. I have known Kaplan from 1935. I was also indicted for possessing a still and I had a co-defendant named Donaghue and O'Brien and Lincoln Rankin. I was sentenced to four years, and that sentence was to run concurrently with the five years I got down in Indiana, which I am now serving. I am now cleaning up the books. I know how to make a still and alcohol. I know how to fix it. I have been doing that a long time, I know many people in the business, and am pretty well known myself. I was convicted in 1931 right here in this court, I had some indictments pending against me in Chicago, before I was convicted in Indiana. I was indicted here first in 1937, for the Spring Grove still, then for the Wilmington still, then for the Downers Grove still. My cases were continued from time to time. At Spring Grove I was the mechanic to see that things went right. I constructed the still. I kind of supervised it. I was the inside man. I handled the alcohol. I had trouble out at Spring Grove, too many thieves. I had to keep on watching them. The Spring Grove still operated not quite two months, I didn't keep a record of how much money I made there. I got paid whatever was left. I got my share, if it was not left, I paid the wages out.

909 I know Victor Raubunas. I don't know Eddie Farber, I met Harry Dukett while I was in jail. Stanley Wasielewski he was my working man, he worked for me in the stills I was in. I was arrested on the Downers Grove still December 9, 1938, I put my bond in that case on January 4, 1939, Glasser represented the Government when I was indicted. The Downers Grove still was

discovered by the Government January 15, 1937, and the year after that I was indicted in that case. I never went over to Kretske's office.

Q. If you did, you would not tell us anyway, would you?

The Witness: I went over to the Tribune Building, I don't know exactly the date. I tried to sell my house, tried to advertise my house, to put an ad in. I talked to you in your office, I tell the same thing.

Q. You told me that from the witness stand, you would tell nothing other than the fact that you were convicted of stills, didn't you tell me that?

A. I plead guilty to every still.

Q. You had a conversation with me in my office, didn't you?

The Court: Answer yes or no.

A. Yes, I had a conversation with you.

Mr. Ward: Did you not in that conversation, say to me that you would tell all about every still you were connected with?

A. That is correct.

Q. But you would not say anything about Mr. Kretske or Mr. Glasser or anything else? Yes or no.

A. I don't know nothing about them.

Q. Did you say you would not say anything about them?

A. I said I don't know anything, I won't say anything about that. Ain't that correct, Mr. Ward?

Q. Didn't you tell me you wouldn't say anything about them?

Mr. Callaghan: I submit that question has been answered, Your Honor.

910 The Court: Answer that question, yes or no.

The Witness: A. Yes, I said that.

Mr. Ward: All right.

The Witness: I saw Kaplan at the Spring Grove still twice. I saw him on 16th street and on Roosevelt. Stanley Wasielewski went over to the Tribune Building with me, I ain't got no idea what day. It was in 1938. I recall that because I took him along to keep me company. I just wanted to put an ad in to maybe could sell my house. I had a house I wanted to sell at Willow Spring, Illinois. I would say that my home is fifteen miles from the Tribune Building. I have been all around

this county in an automobile. I have had men tail me away from stills. I have had police chase me. I didn't have a telephone in my house, there was none near my house. I put an ad in the paper. The Tribune wanted too much money, I didn't put the ad in that day, they wanted too much, they wanted \$8.00. I wanted \$6,000.00 for the house, it had a \$4,000.00 mortgage. I had a picture of the house. They wanted too much money for a picture that size in the Tribune.

Mr. Ward: Q. Did you talk to any real estate people about your house?

A. They wanted a hundred—I forget how many hundred dollars.

The Court: Listen, what we want here is the truth, and nothing but the truth. Do you understand that?

A. Yes, sir.

Q. If you testify falsely on this stand, it may be a much more serious offense than the one you are here on now. I want you to tell the truth, and nothing but the truth. If you went to the Tribune Building for some other purpose, say so.

The Court: I want to ask him a question. Did you go to the Tribune Building that day for the purpose of inserting an ad?

A. Yes, sir.

Q. You did?

911 A. Yes, sir.

The Witness: From the Tribune I decided I wouldn't put the ad in, and went home. At that time there were two indictments pending against me, Spring Grove and Wilmington. I can't remember now what Stanley Wasielewski did when I got to the Tribune Building. I parked my car in a parking lot on Dearborn Street. We put the car over there together.

The Court: We will take a recess at this time.

(Whereupon a recess was had.)

The Witness: Mr. Ward, I want to correct that sentence before recess. Judge, may I? I am sorry I want you to forgive me. He asked me about Kretske. I went to the Tribune Building with Speed, it was about the house to sell. Honestly, that's the truth. That is all. Now Mr. Ward, ask me the question about it.

I know Ralph Boguch. I knew his father long. He died. He worked in the Spring Grove still with me. I

was with Kaplan and Raubunas after Boguch was arrested in the Spring Grove still. I know Edward Dewes, I have known him as long as I know Kaplan. In 1936 October, I got a telephone call from Kaplan and then went over to his garage and met Victor Raubunas, Ed Dewes and Kaplan. They said they had a good spot at Spring Grove, they wanted me to look at, if I liked it. I went over to see it. About two weeks later, there was some talk about investing money in that place. I again met Kaplan, Raubunas and Dewes. They asked me what it would cost to put up a place. They did not have enough money. That conversation took place in Kaplan's garage or Joe Cole's tavern. They left the amount of cost up to me, that is Eddie Dewes, Victor Raubunas and Louis Kaplan. Later I met them at Joe Cole's, they said they got the place rented, that is Louis Kaplan, Victor Raubunas and Dewes. I could not remember exactly the amount of money mentioned. I did not know at that time that Raubunas and Dewes had a still on Western Avenue, I heard that later.

912 I gave orders to move in that Spring Grove.

Q. Do you recall anything being said about protection?

A. No, I don't remember about that.

Q. You know what I mean by protection, don't you?

A. Yes, sir, I do.

Q. Did Kaplan say anything at that meeting about protection in your presence?

A. Not in my presence.

The Witness: After that I met Kaplan in a soft drink parlor on 16th and Kedzie, it was after Spring Grove was raided, and I went back there and saw my working man.

Q. Were you present when Victor Raubunas gave Kaplan \$750.00?

A. No, sir, never saw it.

Q. If you were there, you never saw it?

A. I never saw it. I am telling you the truth.

The Witness: I was in Joe Cole's tavern after the raid with Victor, Dewes and Pregenzer. I said too bad we lost the place.

When I went to the Tribune Building to see Kretske it was about six months or so after I was indicted on the Spring Grove case. I talked to Kretske about trying to get a loan on my house, that is correct. Absolutely the

truth. That conversation took about fifteen minutes. He asked me how much I wanted for the house, he wrote it down on paper, he asked about my mortgage, I promised him a commission. I don't remember how much. I asked \$6,000.00. I gave him the picture, I went home from there. The next time I went to Mr. Kretske's office alone. I wanted to find out what he could do for my house. He had been trying to sell the house. Mr. Kretske said cash is hard to get right now, times are tough. But he asked if I wanted to exchange on some smaller property. I never said anything to Mr. Kretske about my trouble, and he didn't ask me. I never went back there. I didn't see him after that. That was in 1928. I never saw Dewes or 913 Raubunas at Kretske's office. I saw a young lawyer there, it was not this fellow Peter Passman.

The Court: Q. How long did you know Mr. Kretske before you first went to see your house?

A. How long?

Q. Before that day.

A. Oh, 1938.

Q. And you talked to him in regard to selling your home?

A. Yes.

Mr. Ward: Q. Is this the man you saw in Mr. Kretske's office?

A. No, never saw him.

Q. You never saw him there?

A. No.

Mr. Stewart: Let the record show—

Mr. Ward: What is his name?

A Voice: Peter Passman.

The Witness: I never saw him.

Mr. Ward: Q. Is H. L. Passman out there?

Examination by the Court.

The Court: We both can't talk at once.

Q. You stated now, that you called at Mr. Kretske's office in the Tribune Building with reference to the sale of your home, is that right?

A. Yes, sir.

Q. Or to obtain a loan?

A. Yes.

Q. You had a three thousand dollar loan at that time?

A. Four thousand dollars.

Q. What need of money did you have at that particular time?

A. I needed it for my business.

Q. Did you attempt to raise money on your home any other place before you went to Mr. Kretske's office?

A. A couple of real estates.

914 Q. What real estate office did you call on?

A. On 63rd street near Kedzie. I could not recall the name.

Q. Was Mr. Kretske in the real estate business? Was he operating a real estate office at the time you consulted him?

A. I don't know.

Q. But you went there for that purpose?

A. Yes.

Q. Did you go there to consult him as a lawyer or as a real estate salesman?

A. Well, yes, there was a couple of more fellows, a real estate man and lawyer.

Q. Did you go to see Mr. Kretske as a lawyer or real estate salesman?

A. I went to see that young fellow and somebody talked about my property at the same time, and I met Mr. Kretske.

Q. How did you happen to find yourself in Mr. Kretske's office?

A. How I find it?

Q. How did you happen to go to Mr. Kretske's office?

A. I was downstairs, and I don't remember that fellow's name, and got upstairs to see Mr. Kretske, they tell me to. I say, "What floor is he on", and that fellow, I don't know the name, Judge—

Q. You don't know his name?

A. No.

Q. And that is what you went up there for?

A. Yes, that is the truth.

The Court: All right, proceed.

The Witness: I saw Victor Raubunas in Kaplan's garage in 1937 ten or twelve times. I was the treasurer of the organization at Spring Grove. I got money whenever I sold the alcohol, I didn't keep it, I would pay it right out for sugar, cans, workmen, repair bills for trucks and cars and what was left I kept it to myself. I kept no

books. There was never a complaint. I gave Raubunas money, I gave Kaplan and Dewes and Boguch money. 915 Cole and Pregonzer helped themselves to a load of alcohol without my permission. They used to go in the joint in the day time and take it out. I did not give Cole any alcohol, he took the whole load that went to Detroit, without my permission. Maybe Kaplan gave him permission. My partners were Kaplan, Dewes and Raubunas. I was the boss out there, Kaplan was not authorized to give him a load of alcohol. After I was indicted, I paid the Inland Bonding Company for my bond, I paid it to Tony. I don't know him very long. I met him here in the Federal Building, nobody introduced me to him, the first time I met him was in 1937 when I had him put up the bond for Rankin and Boguch. Boguch told Kaplan in my presence that he was arrested in connection with removal proceedings in Montana. I didn't pay any attention because it was not my business. He worked for me but he was talking to Kaplan. I did not pay the money for the removal bond. I heard Louis say, "don't worry", that is all I can say about Louis. Louis whispered something and they went out. That is all I heard about Montana. That was before the Spring Grove still was raided. At Spring Grove I paid Boguch fifty a week and raised him to sixty and paid \$10.00 board for him. I paid Tony Horton 10% for the bond, I don't remember in dollars and cents how much it was. The first time I met Horton in Commissioner Walker's, I thought he was a real nice fellow. He asked me, "You got somebody", I said, "Yes, who are you?" He said "I am the bondsman." I said "Alright". I may have met him a little before that. I paid Horton for bonds for my working men and myself. It was 10% of whatever the bond was. Horton was never present at any time when I spoke to Kaplan.

Stanley Wasielewski was arrested in connection with the Downers Grove still. I talked to him about Kretske, he was with me when I went to his office. Wasielewski was in trouble a few months before that. I don't recall exactly the date, because I never thought I would have to go over these questions. I never kept it in my mind. 916 Wasielewski came over to my house when I got him out on bond. I don't know how long after Wasielewski was arrested it was that I talked to Kretske. I know Frank Hodorowicz, about five or six years. Sometime I

go to a still there. I was never in any stills with Frank Hodorowicz. I never went to Kretske's office with Frank Hodorowicz. I don't remember if I ever saw him in Kretske's office. I don't know William and Eddie Wroblewski. I was never in front of the Commissioner with Wasielewski. I may have met Tony Horton with Wasielewski in front of the Commissioner.

Cross-Examination by Mr. Stewart.

Mr. Stewart: Possibly we can agree on a record that will be furnished and look like this, "D. C. 31244". "In the Case D. C. 31244, United States *vs.* Stanley Slesur, Stanley Wasielewski, Chester Chiafolo, Carl Scaraglino, Bruno Pick, George Miller and Paul Kscazkiewicz. Slesur pleaded guilty on March 31, 1939 and Daniel Anderson was his lawyer and Mr. Glasser represented the Government. Slesur was sentenced to four years to run with two other cases. It was continued for disposition. In the meantime, Mr. Glasser went out of office and Mr. Ward represented the Government when the actual sentence was entered at that time. Wasielewski pleaded guilty and on December 5, 1939, was sentenced to two years. Mr. Ward was in charge of the Alcohol call. He had an order entered, "Cause stricken from docket with leave to reinstate, bond cancelled and surety released." Charles Bellows was representing Chiafolo and T. C. Tudor was representing Paul Kscazkiewicz."

Mr. Ward: That is correct.

Mr. Stewart: The last order in the case is December 5, 1939, which we call stricken from the docket with leave to reinstate.

The Witness: Charles Bellows represented Stanley Wasielewski, Chester Chiafolo and Carlo Scaraglino. Mr. Anderson represented me.

(Witness excused.)

917 STANLEY WASIELEWSKI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Stanley Wasielewski. At the present time I am an inmate at the penitentiary at Lewisturg, Pennsylvania. I was convicted of possessing a still in Terre Haute, Indiana, and here. I was a co-defendant of Stanley Slesur in the Downers Grove still. I was working there for Stanley Slesur, I was arrested in March, 1938 and taken to the new Post-Office Building. The next day I was brought to the United States Commissioner's office, where a bond was set. I don't know who signed the bond, Norton Kretske or Tony Horton. I don't know exactly who made arrangements for the bond, that day, because I hadn't seen anybody that day, but Stanley said he had everything arranged for my bond. I didn't pay anything for my bond. At that time I knew Norton Kretske maybe a year, maybe two. I had not seen him very often. I went to Kretske's office with Stanley Slesur twice. I did not talk to Mr. Kretske when I went to his office. I did not go in the office proper, I was in the other section of his office. Stanley walked in with Kretske, and he was talking with Kretske in his office, I don't know what conversation they had. I drove down-town with Stanley Slesur, from 47th and Rockwell and we parked in a lot around The Fair Store, after Slesur came out of Kretske's office, we left the building together. After Slesur came out of Kretske's office, we had a conversation, and drove home. I didn't hear anything that was said in the office, but when Stanley was going out he says to Kretske to take care of everything. And Kretske says "I will take care of everything between me and the red-head."

Q. Now at that time did you know Glasser?

A. No, I had just seen him.

Q. You didn't know him at that time?

918 A. No, sir.

The Witness: I seen him in the building, in the court, I don't remember if he was before the Commissioner or not. After I was indicted, I came to court about four times. My lawyer's name was Charles Bellows, I did not ask for a continuance. I saw Mr. Glasser there.

When I was sentenced to two years, it was after my conviction in Indiana, and you were in the court at that time.

Cross-Examination by Mr. Stewart.

I was caught in the still on the Downers Grove case, out in the yard. I had been working there about a week and a half, I was a plumber there, and then I drove a car in, I was putting up the still. It was just in operation a week and a half. Stanley Slesur was paying me. I knew that before I was arrested. I knew that when the agents arrested me. I didn't tell them about Stanley Slesur. I told them I was a plumber, and that I didn't know who the owners of the still were. I did that to protect my boss. I lied to them at the start but later maybe a month or two later I decided to tell the truth. I did not have a lawyer before the Commissioner, I had a lawyer when I plead not guilty. That was Charles Bellows.

When I was held over and then indicted, it did not look like my case was fixed. They prosecuted me and they didn't lay off of me or anything. I went up to Mr. Kretske's office with Stanley Slesur a few days after I was arrested, that was after I had my hearing at the Commissioner's. I don't know who arranged my bond. A few days after I made my bond I was up in Kretske's office with Slesur. I don't know whether Glasser was at the hearing before the Commissioner or not. When Stanley Slesur came walking out of the office with Kretske I heard Kretske say everything would be taken care of. Stanley was talking about—I don't know what Kretske was talking about to Stanley in the office, because I had not been in there. I was in another direction. When Stanley was leaving Kretske's office, I heard Kretske say, "I will take care of it with the red-head. Just don't worry about it."

919 I don't know what Kretske and Stanley were talking about, but Stanley was talking to me. He was going to see Kretske to see what he could do about the case. Kretske said about taking care of something with the red-head, the only thing I did that could be taken care of, was the arrest in Downers Grove, that was not taken care of very well, I was held over and indicted. I don't know what Stanley thought could be taken care of at that time. They had a case against him, he had three or four differ-

ent cases, but he lost in all of them. I never done no fixing.

Redirect Examination by Mr. Ward.

Q. Stanley, you didn't, when the prohibition agents came out there to the Downers Grove Still, you didn't stand up there, and when they came up, walk up and shake hands with them and congratulate them on arresting you, and say, "I am glad you arrested me"?

A. No, sir.

Q. And, "I am going to tell you all about this thing," you didn't say that, did you?

A. No, sir.

Q. And you don't know whether or not if the Commissioner was to discharge you, whether that is final as far as your case is concerned? You don't know anything about that, do you?

A. No, sir.

Q. And you didn't know that if you were discharged by the Commissioner, that the United States District Attorney could go in and present your case to the Grand Jury regardless of that, you didn't know that either, did you?

A. No, sir.

Mr. Stewart: Your Honor, where are we going to get at?

Mr. Ward: He takes the witness—

Mr. Stewart: No use wasting time on that.

The Court: What was that last question?

(Question read.)

The Court: It is overruled. He may answer.

920 Mr. Ward: You didn't know that either, did you?

And your case was pending for a considerable time, and you were never tried, were you, in this court, that is right, isn't it?

A. That is right.

(Witness excused.)

WILLIAM WROBLEWSKI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is William Wroblewski, at present I am an inmate of the Penitentiary at Lewisburg. I was convicted here in the District Court at one time and also down in

Indiana. In April, 1937 I lived at 11026 Talman Avenue, my brother Edward is also confined in the Penitentiary with me. He was convicted down in Indiana. I know the defendant Roth since 1938 to 1939. He was my lawyer down in Indiana, my brother Edward and myself were in the same case.

On April 29, 1937 I was arrested by the Government for alcohol tax violation, and brought to this building. I was arrested at 10505 Wallace. I was in the garage unloading alcohol from the car at the time when the agents came in and arrested me. Edward lived there in the building in the front of the garage, his wife lived with him. When I was arrested Edward was not at that place. I had been using the garage there to store alcohol for two or three months. I had a 1936 Ford which I used in handling alcohol. I would drive the car in the garage, fill it and then drive away. I had been off and on in the business. I live at 120 E. 118th Place with my mother. I heard a still was found there but I didn't know anything about it. I heard after it was raided. I used to pick the alcohol that I stored in that garage at 26th and Western. The day I was arrested the agents took me to the Federal Building. I know Mr. Glasser to prosecute me at my trial.

Before that I never heard of him. When I was arrested, I gave the name of William Alfred Burba. The agents did not have any conversation with me about my brother. I don't know whether my brother was taken to Mr. Glasser's office. I was indicted in that case on June 24, 1937 and on October 8, 1937 I entered a plea of guilty before Judge Barnes. I was sentenced to four months by the judge. The judge sentenced me to three months and a \$500.00 fine.—Mr. Glasser asked probation for me, of the judge, the Judge said, "We will have the matter investigated, put it over a week." The Judge found that I had an alias, he was going to give me more time, and he just changed his mind, and he said I had to take the three months and pay a \$500.00 fine. Mr. Glasser was present, I served by time. I had been running alcohol about a year or a year and a half before that. I sold fifty cans a week. I worked on a margin of 50¢ or \$1.00 a can. My brother Eddie and I worked together, it was a partnership. I didn't pay the \$500.00 fine, I made an affidavit that I was a pauper. After I served my time, I was indicted in Indiana with my brother Eddie for the alcohol which was at the premises where I was arrested and received

the three months. I had never made any trips with alcohol to Indiana, I sold it to two fellows in Ohio, they called at my place and bought the alcohol. They were going through Indiana when they got picked up. I have a brother John, I think he was about eighteen years old in 1937. He is living with my mother at 120 E. 118th Street. I know Peter Hodorowicz, I don't know Walter Hort. I didn't know they had a still two doors away from my mother's. I didn't know my brother escaped out of there. A year or so after I came out of jail, I was indicted in Indiana. I was tried in January, 1939. Mr. Roth represented me at the trial. Alexander Campbell was the District Attorney. In April, 1938 we got a call that we should set ourselves up on bond, that we have a conspiracy case coming up in Indiana. Tony Horton made our bond. My brother made arrangements with Horton for the bond. I was convicted down there and sentenced to twenty months, Edward got a year and a day. I met Kretske once. It was at the time when I surrendered on August 1st.

Mr. Roth and Mr. Kretske picked me up, took me and 922 surrendered me in Indiana to the Marshal. I was taken there by automobile, Edward was already in Lewisburg, I had appealed my case. It was after the appeal was denied that Mr. Roth and Mr. Kretske took me to Indiana. I left them that day at the Marshal's office, that was the first time I ever met Kretske. I don't know whether my brother Eddie knew him or not. I don't believe I ever went to the Tribune Building at 7 S. Dearborn Street. I was in the Banker's Building, when I gave my statement to Mr. Devereux. The first time I ever met him was in a tavern at 117th and Michigan. I am going to be 30 years old. I know Tom Bailey. I met him for the first time in the same place. I remember visiting Roth's office in 1939, I was there a few times, but I wouldn't know just exactly what month. I talked to him on the telephone two or three times, and then visited his office. I wouldn't recall visiting his office in August, 1939. I spoke to Mr. Devereux and Mr. Bailey on August 3rd, at South Bend. When I appealed my case I was also on bond. After I was convicted in Indiana, I recall visiting and talking to Mr. Bailey. While I was out on my appeal bond, I recall being at the Alcohol Tax Unit with my brother and Mr. Bailey. At that time we made an appointment to meet at the Bankers Building a short time thereafter. I must have been at the Tax Unit talking to Mr. Bailey about a

half hour. I was supposed to meet him the same day at the Bankers Building. Mr. Bailey told us to meet him at the Federal Bureau of Investigation. I don't know what I was going there for, I was with my brother. Bailey wanted some kind of information, he wanted us to make a statement to Mr. Devereux. We did not go over there. We went to see Al Roth, our attorney. My brother talked to him, I didn't. Not in my presence. I was outside of Roth's office. My brother Edward remained talking to Roth about fifteen or twenty minutes. I remained outside the office at that time. When my brother came out, I talked to him about the case. We did not keep our appointment at the Federal Bureau of Investigation. I was in the court house at Hammond with Mr. Kretske. Just before I was going away Mr. Kretske said that I should keep still, but I didn't know what he meant by it. "Don't say anything." I don't believe I ever saw Kretske in Roth's office. I am not sure if I ever talked with him in Roth's office. I never talked to the man, never talked to Mr. Kretske in Mr. Roth's office before I went back to surrender myself. Every time I saw Roth I talked to him about my case. I never talked to Mr. Kretske. The only time I would remember meeting Mr. Kretske was while we were riding to Indiana. I don't recall at the present time that I ever met him.

Q. Well, now, would it refresh your recollection if I was to call your attention to a statement that you made to Mr. Devereux and Mr. Bailey on August 3, 1939, in which you said, "On one occasion while I was in Roth's office, he, Kretske, said to me if you had any cases fixed, don't talk about them, or you will get into more trouble." Do you remember that?

A. I don't believe it was Mr. Kretske.

Q. Who told you that?

A. Well, the way that come out, I went down to see Mr. Al. Roth, and I told him that I was having trouble with the law, and I said that the law is looking for some information from me, and Mr. Al. Roth told me if I gave information to anybody I would be implicated in the case.

Q. Was it he used the word "implicated"?

A. That is right.

Q. So that was an occasion when you were in Roth's office that Mr. Roth said that to you?

A. Yes, sir.

Q. Now, are you sure he didn't say: "If you had any

cases fixed, don't talk about them, or you will get into more trouble''? That he didn't use that language?

A. Well, I might have expressed myself that way at the time, but I recall now that the right way is implicated.

Q. Implicated?

A. Yes, sir.

924 The Witness: Mr. Roth told me that I would be implicated if I gave any information, that is all I remember. I may have seen Roth shortly before July 1938 because we were there a few times to talk things over about our case. My brother Edward took care of the fees. He took care of all that. I believe he paid Mr. Roth \$250.00 for handling the case in Indiana. I am pretty sure that is what he told me he paid. The trial in Indiana lasted one day. I never paid him any money. My brother took care of all that. If he paid out any more money he would tell me about it, and I would adjust my affairs, but he never told me anything. The wind-up is we still owe Al Roth \$250.00, so it must have been \$250.00 apiece, I wouldn't know really, because he handled all of that. The day I got arrested for possessing alcohol I had 150 gallons.

Cross-Examination by Mr. Stewart.

I had the automobile under the name of Burba, I had a record in connection with alcohol some time in 1932 or 1934. At that time I was arrested under my right name, Wroblewski. I had two reasons for giving the name Burba, one was to conceal my former arrest, and the other was to help protect my brother. I denied that I was the brother of the other man that was arrested under the name of Wroblewski. I did that just to protect myself and my brother. When the agents arrested me I didn't tell them I had been in the alcohol business more or less, for a year and a half. I was not innocent, I was caught with the stuff, I tried to make it appear that is the only stuff I had had anything to do with. You might say it was a lie. When I came up before Judge Barnes Mr. Joseph Bolton was my lawyer. I had nothing to say. I wouldn't recall that my lawyer asked for probation, I didn't tell the Judge that I had taken a false name in order to conceal my previous arrest and to protect my brother. I misrepresented myself before Judge Barnes. When the probation people investigated they found out

where I had misrepresented myself. Otherwise I might have gotten probation. That is the way it is.

925 I tried to get the \$500.00 to pay my fine, but was unable to do so. Mr. Bailey helped the Government in my case down in Indiana, he was down there working on my trial against me when I was convicted. I don't know if he knew that I was already convicted in this District for the same alcohol. After I was convicted and got my twenty months, Mr. Bailey came to see me. Mr. Bailey during his conversation with me, after I was convicted, did not tell me that he might be able to help me in the Circuit Court of Appeals, and that he was after Glasser and Kretske and that if I would stretch a point or two, he would help me. I told Mr. Bailey that I had never met either Glasser or Kretske. I told him that, I wouldn't recall that Bailey threatened me and my brother with a contempt action. He never said anything about having a third case that he might press against me if I didn't go along with him. I did not tell Roth all those things that you just asked me, my answer is I don't remember. Roth told me that I would be visited by Mr. Bailey, and these Government agents in the penitentiary with all sorts of propositions. I don't remember if I said, "Well, no use, because I am not going to lie for them, and I am not interested in any of their premises." My parole is supposed to come up this month.

Redirect Examination by Mr. Ward.

I know that a pauper's oath relieves me from being kept in jail on account of the fine, but does not relieve me from paying the fine. I did not tell Mr. Roth that I had taken a pauper's oath.

I never talked to you. You never promised me anything for testifying in this case.

Recross Examination by Mr. Stewart.

Mr. Bailey bothered me for a statement, he did not nearly drive me crazy. My wife's name is Eleanor, I know her handwriting.

Mr. Stewart: I am going to read to you this one paragraph in here. "I visited Willie and asked him if he had signed some statement for Bailey, and Willie said Bailey was after him so much and had bothered him so

much, he was forced to sign it. Willie said he would
926 testify in court that Bailey about drove him crazy,
bothering him to make a statement." Now, did you
make that statement to your wife down there in the peni-
tentiary?

A. My wife was never in the penitentiary.

The Witness: I told her I am going to make a state-
ment, that I didn't say anything about being driven crazy
at that time, and I didn't say anything about Bailey
forcing me to sign a statement. She came down to visit
me and I just let her know I signed a statement.

Q. And did you tell your wife that Mr. Bailey had been
bothering you to make a statement?

A. Well, I told her that Mr. Bailey visited me a couple
of times about giving a statement, which I did.

Q. Well, did you use the word "bothered" in describing
visits?

A. No, sir.

Q. Now, do you want this Court and Jury to under-
stand from your testimony concerning your appearance
before Judge Barnes, that it was Mr. Glasser who first
suggested to the Judge that you get probation, or was
that your own lawyer that was trying to get it for you,
and Mr. Glasser recommended or didn't object to it? Did
your lawyer talk first on that subject?

A. Well, I wouldn't swear to it.

Q. You wouldn't swear to it. You know it is the usual
practice for the prisoner's lawyer to ask first for pro-
bation?

Mr. Ward: I object to that.

The Court: That is not the practice.

Mr. Stewart: Well, he probably wouldn't know very
much about the usual practice, I will withdraw that, Your
Honor.

The Court: All right.

Mr. Stewart: Q. Well, what is your memory on the
subject as between your lawyer, Mr. Bolton, and Mr.

Glasser, what is your memory on the subject? If you
927 say you don't remember, that can be your answer too,
but give us your best recollection as to who it was be-
tween Mr. Bolton and Mr. Glasser, who first brought
up the subject of probation for you with the Judge?

A. I believe it was Mr. Glasser.

Q. That is your memory of it?

A. Yes, sir.

(Witness excused.)

PETER P. PASSMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Peter P. Passman, I live at 520 Stratford Place, I am an attorney since February, 1937, admitted to the bar of Illinois. I am not practicing law at the present. I am superintendent of the Mill Grove Lumber Company, 1201 S. Campbell Avenue. I know Norton I. Kretske. I met him for the first time about the middle of April, 1938, at his office, at 7 S. Dearborn Street, Room 1128, I went to visit with my cousin who was in the same office. Originally I became associated with my cousin and I came to know Mr. Kretske then through that procedure. I had no arrangements with him directly, whatever arrangements were made, were made between me and my cousin, H. L. Passman. While I was in that office, I performed some services for Mr. Kretske directly. I don't know when Kretske moved into the Tribune Building. I came over here to the building in some criminal cases. I do not recall a man named Adam Widzes. I never discussed that with H. L. Passman. I recall coming over to the United States Commissioner in the case of Walter Buchanec, Peter Macowitz, Joseph Netko, Herman David and Richard Clement. It was in November of 1938. I remember having been at the hearing but I do not have any recollection in detail of the hearing. I represented Netko and Macowitz. Kretske asked me to come over to the building. I came over and attended the hearing, and they were held to the District Court. I reported to Mr. Kretske what had happened. I do not know Mr. Glasser, 928 personally. I met him here at the building, I think I met him in that case. I recall he represented the Government. I know Roth. He was in that case, but I don't recall who he represented. I met Tony Horton. I don't remember if he was there or not. I made no arrangements to get Netko or Macowitz out on bond. I think I have seen Horton in Kretske's office a few times, I haven't any recollection of the time. Mr. Kretske would spend as much time in his office as any lawyer normally spends. I would say an average of about four or five hours a day. I was not employed by Kretske, I believe

we had an office arrangement. There were two offices in the suite and I had one. I think I recall having told him when I returned to the office that the men I went to represent, were bound over to the Grand Jury. Subsequently, I had a conversation with him about the matter, when the gentlemen were to have appeared for trial, there was a misunderstanding, as to the time that the case was set for. I don't know whether I filed my appearance in that case or not. I recall there was some misunderstanding, and the defendants did not appear in the morning, and their bond was forfeited. They thought they were to appear at 2:00 o'clock, and the case was set for 10:00 o'clock. I came over to the building with respect to having that forfeiture vacated. I didn't have any papers with me at all, the first time I came, I talked to you. I told you I was representing Netko, Buchanek, and Macowitz, and wanted to have that forfeiture vacated and set aside. You told me you thought there was some misunderstanding and that you would have no objection to it. You suggested that I draw up an order which you signed, and brought that down to the Judge, whom I believe was Judge Igoo, and he was preparing to go on a vacation at that time, and he would entertain it. I came back to your office and you said there was nothing more you could do about it. These are the photostatic copies of the petition and notice that I brought over at the time that I moved to vacate the forfeiture. I recall the petition being drawn up in my office.

Kretske was the Notary Public. I don't recall if I 929 brought it over to the Clerk's Office or not. Judge

Wilkerson vacated and set aside the forfeiture. I believe Mr. Horton was the bondsman in that case. Mr. Kretske suggested that I come over to see you about the forfeiture. I don't recall Mr. Horton being there at the time. I don't recall Mr. Horton's presence accompanying me to court. I have seen Mr. Balaban around the building. I don't believe he was present at that time. I did not talk to him about it. I took no part in the case from that time on. I don't know who represented Netko, Buchanec and Macowitz at the trial.

(Whereupon EXHIBITS 130, 131 and 132 were offered and received in evidence.)

(Witness excused.)

H. L. PASSMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is H. L. Passman, I live at 3528 Rita, I am an attorney, I used to office with Norton Kretske at 7 S. Dearborn Street. I had space and paid rent. I was in the building, and he was looking for an office, and he suggested that I go in with him. At Mr. Kretske's request I appeared in the Beisner case. I kept no record of it, I appeared for the first hearing, I think that is the only appearance I had. I don't know what happened after that, I merely came over at the request of Mr. Kretske.

(Whereupon EXHIBIT 133 was offered and received in evidence.)

All I came over for on the case was for a continuance and I didn't familiarize myself with it. Kretske asked me to go over as I recall it, I think Harold Marovitz, the other lawyer, was representing two defendants, he thought there was going to be a continuance, and Kretske wanted me to go over and see what happened. I know who the defendant Glasser is, I have seen him in court,

he was in the Commissioner's office. Marovitz did some 930 talking, frankly it is not clear, what did happen there. I don't even remember what it was. It was just a few minutes, and there was a continuance. I talked to Glasser just a very few times. Glasser may have known I was from Kretske's office, I don't know, I wouldn't know, I didn't tell him. I came over on one other case, I don't remember the name of it.

(Witness excused.)

EDWARD WROBLEWSKI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Edward Wroblewski, I am a brother of William. My father's name is John. I am known by the name of Edward Sparrow, that is English for Wroblewski.

At the present time I am an inmate of Lewisburg Penitentiary. I was convicted in Indianapolis May 5, 1939. I was also convicted in the Northern District of Indiana. At the present time I am serving two sentences, and they are running concurrently. In 1937 I lived at 10505 S. Wallace. My brother was arrested at that place. I lived there with my family and had been there three and a half years. There was a garage in the rear, I did not have an automobile. My brother had a Ford Coach. I had a wife and two children. I had a tavern business at 11757 S. Michigan Avenue. I gave that tavern up in 1937 before my brother William was arrested, between the time I sold the tavern and the time of William's arrest, I was doing nothing. I had a few dollars saved up. I was not doing any business with my brother William at that time. I just remained inactive until I had used up the little money I got out of the tavern, then I sold a little alcohol. All the time I was inactive I was around the house, out in the garage. I saw my brother William around there about once a week. He came to the garage in his car. After the warrant I found out that he kept alcohol in there. I did not know that he kept alcohol in there. All the time I lived there William was using the garage. He paid something to my wife for it.

931 When my brother was arrested I had some colored spirits on which the tax had been paid in the basement. It was whiskey taken from bottles after I sold the tavern that I put into the five gallon jug, for my own use. I had it there at the time I sold the tavern. It was not there the day my brother was arrested. They left a note at home for me to appear the following morning at the Post-Office, I think the 9th floor, I am not sure. I was convicted in the Southern District of Indiana for conspiracy to sell alcohol. That alcohol was supposed to have been taken from the premises where I lived. Where William was arrested.

When I got down to Glasser's office, he asked me what was in the jug, and I told him, so he told me to go home. He said the next time you have anything like that, have stamps on the jug. I told him I couldn't have stamps on the jug, because the stamps were already on the bottles, and half of the bottles that were half full, I used for whiskey, and put it in the jug, he listened to me and said alright. There was four gallons of colored spirits and a half a gallon of uncolored spirits found in my base-

ment. I don't remember if he asked me about the uncolored spirits. I kept that in a separate container, it was gin I brought from the saloon. I don't remember if he asked me anything about my brother. I don't think he did. I went home and that was the end of that. The next thing I knew, I got indicted down in Indiana, Roth was my lawyer.

Q. How did you happen to hire Roth?

A. I don't remember how I got acquainted with Mr. Roth.

Q. Well, you lived out quite a ways from the Loop, did you not?

A. Yes, sir.

Q. How many miles?

A. About twelve miles.

Q. Do you know any lawyers in South Chicago?

A. No.

Q. And you can't tell us how you happened to get Mr. Roth?

A. I don't remember how I ever met Mr. Roth.

932

Examination by the Court.

Q. What is that?

A. I don't remember how I met Mr. Roth.

Q. How many lawyers have you hired in your lifetime?

A. Two.

Q. Who were they?

A. Three.

Q. Who were they?

A. Mr. Bolton, Mr. Roth and Mr. Gutsell.

Q. Did you hire Mr. Roth before you hired the other two?

A. After.

Q. After. Well, you must have some recollection of the circumstance concerning the employment of Mr. Roth; now, tell us about it.

A. I don't quite understand your question.

Q. You know something about how you happened to hire Mr. Roth, now tell us the story about it.

A. Well, I don't know, as I say, I don't remember how I got acquainted with Mr. Roth.

Q. How did you get acquainted with him?

A. I don't remember that.

Q. When did you first see him? Where did you first see him?

A. In his office.

Q. In his office?

A. Yes.

Q. How did you happen to go to his office?

A. I don't know.

Q. What is that?

A. I don't remember, Your Honor.

Q. When was this?

A. For this trial, in 1937, I think it was.

Q. In 1937?

933 A. Yes, sir.

Q. Did somebody take you to his office?

A. I don't remember.

Q. What is that?

A. I don't remember.

Q. How old are you?

A. 31.

Q. And what education have you had?

A. Two years high school.

Q. What is that?

A. Two years high school.

Q. And you don't want to tell us now, how you got to Mr. Roth's office?

A. Your Honor, I don't remember.

Q. Why don't you remember? Is there any reason why you should not remember?

A. No, no reason. I just don't remember.

Q. Did you brother take you up there?

A. I don't remember.

Q. How old are you now?

A. Past 31.

Q. How old is your brother?

A. 28.

Q. What is that?

A. 28.

Q. You are 31?

A. Yes, your Honor.

Q. Mr. Roth represented you in Indiana?

A. Yes, sir.

Q. For the trial?

A. Yes, sir.

Q. And at that time you were convicted?

A. Yes.

934 Q. In a trial before the Court and Jury?

A. Yes, your Honor.

Q. How much did you pay Mr. Roth?

A. \$250.00.

Q. \$250.00. And you don't know now how you got to his office?

A. I don't know now how I ever got acquainted.

Q. Nobody recommended him to you?

A. No, sir, I don't remember whether it was a rumor about his name.

Q. What is that?

A. A rumor. I don't remember how I met Mr. Roth.

Direct Examination (Resumed) by Mr. Ward.

Mr. Ward: Q. Talking again about your being in Mr. Glasser's office and talking to Mr. Glasser, did he ask you about that alcohol that was found in the garage?

A. Did Mr. Glasser ask me?

Q. Yes.

A. That I don't remember either, but the questions were asked of me in the Post Office by the Alcohol—

Q. I am speaking about the District Attorney's office.

A. I don't think so.

Q. How long were you in his office?

A. About five minutes.

Q. Do you recall that day?

A. I don't.

Q. Did he ask you how long you lived at the address?

A. I don't remember that either.

Q. Did he ask you if you knew William Burba?

A. He did not.

(Witness withdrawn.)

935 THOMAS BAILEY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Thomas Bailey, I am a special investigator, Alcohol Tax Unit. I entered the Government service in 1926. I am a retired army officer, with the rank of Lieutenant Colonel. I have been in Chicago since the 8th of May, 1937 for regular assignment here. I know all the defendants in this case.

In February, 1938 I had a conversation with Mr. Glasser at his office and at the County Jail. It was with reference to a case involving a number of men who had been convicted here, one of them was a man named Frank Brown. Mr. Glasser had prosecuted before Judge Woodward, and some convictions were obtained.

Q. Now, before going to the County Jail with Mr. Glasser, did you have a conversation with him; and if you did, state what he said and what you said.

A. I informed Mr. Glasser that a man by the name of Frank Brown, who had been convicted in this case, had sent me a letter and wanted to talk to me; that two days previously, I had gone to the County Jail to talk to Frank Brown and was not able to talk to him in private. I asked Mr. Glasser if he would arrange with the Marshal to have Brown brought over to his office, so both of us could question Brown on this particular still. Mr. Glasser then called the Marshal's office, and a short time later Mr. Brown was brought into Mr. Glasser's office.

Q. Prior, to that, did you go to the jail and talk to someone?

A. On February 21, 1938, I went to the County Jail and tried to talk to Frank Brown, and was there told I could not talk to Frank Brown in private, I would have to talk to him through the bars. I refused to do that and left the jail.

936 Q. Now, in this conversation with Mr. Glasser, did he mention anyone in particular that he was interested in?

A. In my conversation with Mr. Glasser, we discussed Nick Abosketes in connection with this particular still.

Q. What was said?

A. In talking to Mr. Glasser, I told him that Frank Brown had talked to me previously, and that I believe Brown would be able to connect Nick Abosketes with this still. Mr. Glasser said, "We will have him brought over right away."

Q. And was Frank Brown brought over to Mr. Glasser's office?

A. He was.

Q. Did a conversation take place between you, Brown and Glasser in his office?

A. Yes, sir.

Q. State the conversation, please.

A. I asked Mr. Brown,—I introduced Brown to Mr. Glasser. They had met before in the court room. They spoke to each other and I said to Mr. Glasser, "I believe Brown can give us some information about Nick Abosketes, if he will." Brown then asked what we could do for him, he asked if we could cut his sentence if he gave us information. I told him I had nothing to do with that. Mr. Glasser said he would not make him any promises. Brown said he would give us some information, but would not testify. I told Brown we wanted evidence, and not information. Brown said, "Well, it would be too dangerous for me to testify in the case." Mr. Glasser then asked Brown some questions pertaining to Nick Abosketes. Brown kept insisting on a promise if he gave information. We did not get anywhere with the conversation and Brown was returned to the County Jail on that occasion.

Q. Now, after Brown was returned to the County Jail, did you have a conversation with Mr. Glasser, in which Abosketes' name was mentioned?

937 A. Yes, sir.

Q. When and where?

A. After Brown was returned to the County Jail by the Marshal, or returned to the Marshal's office that day, Mr. Glasser said he would arrange to take a number of prisoners at the County Jail and would like me to go over there with him. On February 23rd—or the 25th, I think it was, Mr. Glasser called our office and the aid, Mr. Casserly notified me I was to meet Mr. Glasser at the County Jail about 1:00 o'clock. I went to the County Jail about 1:00 o'clock in the afternoon, and Mr. Glasser and his secretary, Miss McGarry, were at the County Jail. Mr. Glasser arranged with officials at the County Jail for us to talk to a number of prisoners connected in this case, in the infirmary at the County Jail. We went down to the infirmary and talked to about ten or twelve prisoners. Miss McGarry took their statements. The conversation was pertaining to Nick Abosketes' connection with this still.

Q. And was Mr. Glasser asking the different questions about Nick Abosketes?

A. He was, and I also did.

Q. Now, at the conclusion of that, where did you go?

A. At the conclusion of that interview, I returned to my office and Mr. Glasser and his secretary left the County Jail. I don't know where they went.

Q. Did you have any other conversation with Mr. Glasser or anyone else in Mr. Glasser's presence, regarding the Abosketes case?

A. I did.

Q. When and where?

A. On March 10, 1938, in Mr. Glasser's office. I again told Mr. Glasser I thought we ought to have Frank Brown brought over to his office. Mr. Glasser then called the Marshal and arranged for Brown to be brought to his office. Brown arrived a short time later in the morning.

After Brown arrived, I questioned him about Nick 938 Abosketes, and Mr. Glasser did. Brown again wanted promises that his sentence would be cut and I told him we could give no promises. Mr. Glasser said he would see what he could do. Brown then said that Nick Abosketes had gotten him to rent the farm where the still was seized, and Nick was to cut him in the profits.

Q. Did you make a memorandum of that conversation?

A. Yes, I did.

Q. When?

A. That evening, as soon as I got back to the office, I made a note in my diary.

Q. Did you have a further talk with Mr. Glasser about the Abosketes case after that?

A. No, after Frank Brown left Mr. Glasser's office on that occasion, Mr. Glasser then discussed with me what prisoners should be kept at the County Jail and who should be sent to the penitentiary. He said, "We will keep the prisoners that will be most apt to talk, and the others we will have sent to the penitentiary."

Q. How many was there?

A. I don't recall at this time.

Q. And that concludes what you know and what you had to say, and what Mr. Glasser had to say regarding the Abosketes' matter?

A. I never discussed the Abosketes case with Mr. Glasser after March 10th.

Mr. Ward: Your Honor, Mr. Bailey will be, of course, recalled to the stand to testify to other matters, so I—

The Court: That is all you want of him at this time?

Mr. Ward: That is all I want of him at this time.

Mr. Stewart: Your Honor has been ruling that I am limited to the direct. This is not in the Bill of Particulars and I am not prepared to cross examine on it; so if it is all

right with Your Honor, I will not cross examine at this time.

The Court: All right.

(Witness temporarily excused.)

939 WILLIAM M. BRANTMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is William M. Brantman, I live at 40 E. Oak Street. I am a public accountant for twenty three years. I have been in the City of Chicago about thirty nine years. I know the defendant Kretske about thirteen or fourteen years. My office is at 10 South La Salle Street for about six years.

Q. Do you know a man by the name of Nick Abosketes?

A. I knew him as Nick. I don't recall his last name, that might be it. I saw him in your office within the last few days.

I first met Nick Abosketes at the Bismarck Hotel in Chicago in 1938.

Q. How did you happen to meet him?

A. I was introduced to him by a friend, a party I knew as George. Once in a while he called himself Jasper.

The Witness: Some time later Nick visited my office. It was a month or two later. I saw him in Detroit two or three times. I saw him in Chicago, I met him once in Milwaukee, and once in Waukegan.

Q. How did you happen to meet him in those places?

A. He made the appointment himself.

Q. When and where?

A. Either by phoning my office or sending word to me.

Q. After you made these appointments, you kept them, did you, with him?

A. I did.

Q. What did you talk about?

Mr. Stewart: I object, your Honor.

Mr. Ward: Generally, without mentioning the conversation.

Mr. Stewart: I object. That is the same thing.

The Court: Overruled.

940 Q. Did you talk about the weather, or the war, or what?

A. We talked about himself, that he thought he was in difficulty, and expected to be in other difficulties.

Mr. Stewart: Just a moment. I object to that, Your Honor.

Mr. Ward: Q. Now after you have these conversations with him, did he visit your office?

A. Yes.

Q. When was that?

A. I can't remember the exact date. It was in between the periods of February and April.

The Witness: Exhibit 134 is a receipt for some money. It bears my signature. It is dated April 19, 1938, and is in my handwriting.

Q. You received this of Nick Abosketes?

Mr. Stewart: Just a moment. I object to his reading it until it is in evidence.

Mr. Ward: I am asking him a question. Was it received of Nick Abosketes on account of services—

Mr. Stewart: Just a moment.

The Court: Are you offering it in evidence?

Mr. Ward: I am offering it in evidence.

Mr. Stewart: May I see it?

Mr. Ward: Yes, there it is.

Mr. Stewart: Well, there is nothing to show it is material here, Your Honor. It is a receipt.

Mr. Ward: I will show that it is.

The Court: It may be received under the condition you will tie it up with something.

Mr. Ward: I will do that.

(Whereupon the document so offered was received in evidence as EXHIBIT NO. 134.)

941 Mr. Ward: Q. (Reading.) "Received of Nick Abosketes on account of services, the sum of \$3,000. Signed William M. Brantman, 10 South La Salle Street." Is that right?

The Witness: A. I rendered no services. It was just placed with me in escrow.

Mr. Stewart: Just a moment.

The Court: What is that?

The Witness: A. I rendered no services. It was just placed with me in escrow.

Mr. Ward: He rendered no services. It was just placed with him in escrow.

Q. Do you recall the day that money was paid to you?

A. According to the receipt, it was April 19, 1938.

Q. Where did you receive that \$3,000. from Nick Abosketes?

A. In my office.

Q. Now, do you recall Nick being in your office,—Abosketes?

A. Yes, sir.

Q. You recall him paying you that \$3,000., do you?

A. Yes.

Q. Where did he get that \$3,000. from before he paid it to you? I mean, in your presence, what did you see him do?

A. He took it out of his pocket and some out of his shoe.

Q. What were the denominations of the bills?

A. I believe they were one hundred dollar bills, and perhaps some other denominations.

Q. Now, after you received this three thousand dollars from Nick Abosketes, who did you give it to?

A. I held it.

Q. How long?

A. Probably thirty or forty days.

Q. And then did you give it to someone?

A. I thought the man might change his mind and want it back.

Mr. Stewart: I move to strike what he thought, Your Honor.

942 The Court: He said he held it for thirty days.

Mr. Ward: Q. Did you give it to someone?

A. I did.

Q. Who?

A. I gave it to Mr. Kretske.

Q. Norton I. Kretske, the defendant in this case?

A. Yes.

Q. Now, you have talked to Mr. Kretske about that?

A. Yes, I talked to him, I took him to be his representative.

Q. Where did you talk to him?

A. I don't know whether it was at his office or my office. I assumed he was going to be the attorney for the man.

Q. Did Nick ask you to hire an attorney for him?

A. I don't know what the conversation was, I don't recall. He stated so many things, I did not try to remember his conversations.

Q. You had a conversation with Mr. Kretske before you turned that money over to him, didn't you?

A. I might have, I occasionally would run into the man.

Q. How did you happen to turn it over to Mr. Kretske?

A. I don't know, I think he might have been designated by Nick as someone to represent him in his matters.

Q. Do you recall having any conversation about that?

A. I probably did, I don't recall they were.

The Court: Q. How much of the three thousand dollars did you turn over to the defendant, Mr. Kretske?

A. I turned it all over. I was just holding it as an escrow.

The Court: Was there anything given to you later for your services?

A. No.

Q. By anyone else?

A. No, I was just holding it in escrow.

Q. Not by Mr. Kretske or anyone else?

A. No.

Mr. Ward: Q. Now, when you talked further to Mr.

Kretske,—did you have any further conversation about 943 any additional amounts?

A. I think there was some conversation, I don't know whether it was with Mr. Kretske or Nick, it was about a total of \$5,000. altogether.

Q. Do you recall having any further conversations with Mr. Kretske about the additional two thousand dollars?

A. I might have mentioned it to him, the sum, that Nick said he had no more money, that he was not as wealthy as people thought he was.

Q. Nick said that to Mr. Kretske?

A. No.

Q. I am speaking about the conversation with Mr. Kretske.

A. I might have passed that remark on to him, I don't remember.

Q. Was anything said at all about the balance of two thousand dollars?

A. I might have said that is all I got. That is all the man could put in escrow.

Q. You gave Mr. Kretske the \$3,000. and mentioned about the balance of the \$2,000.?

A. Yes.

Q. What did you have to say to Mr. Kretske about that additional two thousand dollars?

A. I don't definitely remember.

The Court: Q. What is that?

A. I don't definitely remember.

Q. What is your best recollection?

A. It seemed the man could not put up more than \$3,000.

Mr. Ward: I am speaking about your conversation with Mr. Kretske.

The Court: He is trying to tell you. Go ahead.

The Witness: A. I might have remarked to Mr. Kretske that the man could not put up the other two thousand dollars.

Mr. Ward: Q. Now, after you paid Mr. Kretske the three thousand dollars, did this conversation regarding 944 the two thousand dollars take place, or was it at some time that you paid him—at the same time you paid him the three thousand dollars?

A. I don't remember. It is hard to recollect where and how my conversations were with the parties.

Q. Did Nick request that receipt from you when he gave you the money?

A. Yes, sir.

Q. Now, after you talked to Mr. Kretske about the additional two thousand dollars, did you have any conversation with Nick Abosketes about it.

A. I might have on one other occasion.

The Witness: I have visited Waukesha, Wisconsin many times. I believe I run into Nick one day, not by appointment, purely by accident. I was there taking the baths and the man drove up from Milwaukee. I might have exchanged the compliments of the day. I believe it was after I had given the \$3000. to Kretske.

Examination by the Court.

Q. I am interested in how you happened to meet Nick Abosketes for the first time.

A. I met him at the Bismarek Hotel, I was introduced to him.

Q. Was that by appointment at your request?

A. No, another individual.

Q. Who?

A. A fellow by the name of George.

Q. What is his occupation?

A. I don't know. I met him around different night clubs, and was introduced to him. This man wanted my business card and I gave it to him. I never had any business dealings with him.

Q. How did you happen to be there at that time?

A. This man might have made an appointment to meet me.

Q. For what purpose?

A. To meet the man and talk over his business with
945 him. I thought it might be in my line of business.

Q. You were an accountant at that time?

A. Yes, and I still am.

Direct Examination (Resumed) by Mr. Ward.

I was standing in the lobby and this man by the name of George walked up to me. I had met George before, about a year and a half before. That was not with Nick, he told me he had an appointment with him. The man called me up and asked me to be there at a certain hour, which was in the afternoon. I was in my office when he made the appointment. We probably visited a half or three quarters of an hour.

Q. When you got through talking with him, did you know or did you expect that any person by the name of Nick Abosketes was going to call at your office?

A. No, sir.

Q. When was the first time you heard Nick Abosketes' name mentioned to you, and who mentioned it?

A. This fellow George mentioned Nick to me. I did not get the man's last name until about the time of making the receipt or thereabouts.

Q. What was George's last name?

A. I don't know his last name.

Q. How many times had he been to your office?

A. Oh, probably half a dozen times.

Q. Did you ever ask his last name?

A. I might have and he said, "It is all right, call me George."

Q. When was the last time that you saw Nick Abosketes before yesterday?

A. The late summer of 1938.

Q. And where?

A. I believe in Chicago.

Q. Now, this man George, when he would come to your office, would it be with reference to some business deal?
946 A. He visited several times when he was only just coming in to chat.

Q. What did he talk about, the weather, baseball, or what?

A. He was trying to get some business for me in my line, my profession.

Q. He was trying to get some business for you in your accounting work?

A. Yes, sir.

Q. Do you know Ralph Capone?

A. I do.

The Witness: I judge George's nationality to be Italian. He was about five foot seven or eight. When he visited my office he was visiting about things in general and we talked about business conditions. He was a general visitor. He was still furthering and continuing my acquaintance. In my work as an accountant in 1937 and 1938 I frequently had to visit this building.

Q. You frequently had occasion to visit the District Attorney's office?

A. Yes, sir.

Q. In reference to tax matters?

A. That is right.

Q. That would be on the 8th floor?

A. Yes.

Q. Do you know Mr. Glasser?

A. No, sir.

Q. Did you ever see him before the time you got this money?

A. I have seen him, I think I might have been introduced to the man once, but I don't think it was before I got that money.

Q. You never had any conversation with him in any event?

A. No, sir.

Q. What?

A. No, sir.

947 Q. How long after you got that money was it that you first talked to Mr. Kretske, or when did you first talk to Mr. Kretske after you got that money?

A. I don't know, I might have talked to him before. I know I talked to him afterwards. I would run into the man occasionally,—not by appointment.

Q. What did you say to him before you got the money?

A. He might have approached me and told me he was out in private practice himself, and if I knew of any business in his legal profession, to keep him in mind.

Q. You think he said that, do you?

A. Yes, sir.

Q. Did you make a memorandum of that?

A. I did not have to make any, I knew the man in a business way.

Q. When you got this three thousand dollars,—you say it is very frequent that you handle matters with lawyers?

A. Yes, sir.

Q. That was to be an escrow agreement, is that right?

A. That is right.

Q. Were the terms of the agreement discussed?

A. No.

Q. Did you know how long you were to hold it?

A. There was no specified time and no terms of the agreement. I did not know the facts in the case.

Q. Why did you hold it thirty days?

A. As a matter of precaution. If the man wanted his money back, if he did not request it in thirty days, I knew he was satisfied and I could transfer the money.

Q. All the time you held it, did you know what you held it for?

A. No.

Q. Where did you keep it?

A. I kept it in the vault.

Q. Now then, you turned it over to Mr. Kretske?

948 A. Yes.

Q. That was at the conclusion of thirty days?

A. Yes.

Q. Did you talk to anyone before you turned it over to Mr. Kretske, or at the conclusion of the thirty days? How did you happen to go over and give it to Mr. Kretske?

A. There was some conversation.

Q. With whom?

A. Through Nick and through others, that this man was to represent him as an attorney in Chicago.

Q. Nick said that?

A. Yes.

Examination by the Court.

Q. What matters did he have in Chicago at that time?

A. I don't know, he was anticipating some difficulty?

Q. What difficulty?

A. As I gathered later, he was handling alcohol or some illicit operation.

A. The 20th or 22nd of February.

Q. What was he leaving the money with you for Mr. Kretske for? Was there some understanding with you?

A. There was no understanding with me. I was to be the escrow holder. I knew nothing of the deal. I had never been with the two gentlemen in their discussions, if there were discussions. I had always met Nick by himself or with George; and when I talked to Mr. Kretske it was by himself.

Direct Examination (Resumed) by Mr. Ward.

Q. Did Mr. Kretske ever tell you there was an indictment pending against Nick in Chicago?

A. I don't remember that.

Q. What is that?

A. I don't remember that.

Q. Did you know there were some matters pending? Did Mr. Kretske tell you there were some matters pending, or that somebody was due to be indicted?

A. I think Nick mentioned that.

Mr. Stewart: I move to strike that, Your Honor. That would be conversation out of the presence of any of the defendants.

The Court: It may be stricken for the time being.

Mr. Ward: Q. Now, you had a conversation with Mr. Kretske, you discussed being paid something out of that money, didn't you?

A. Well, I was running back and forth as the thing carried on.

Q. You were running back and forth where?

A. On appointments with Nick.

Q. Where?

A. In Chicago, and I made one in Milwaukee.

Q. Where in Chicago?

A. Once or twice at the office and once at the hotel.

Q. You said you were running back and forth.

A. That is just an expression.

Q. Some appointments in Chicago?

A. No.

Q. Where?

A. At different times, I had appointments with Nick at his request, his calling me.

Examination by the Court.

I met him at the Bismarck Hotel, on one occasion he called me and asked me to meet him in Chicago, it might have been before the three thousand dollars was paid to me.

Direct Examination (Resumed) by Mr. Ward.

Q. Did Mr. Kretske ever ask you whether you ever got the two thousand dollars to pay him?

950 A. I don't remember, I might have stated to him when I turned the money over, about that two thousand dollars.

Q. To refresh your recollection, have you forgotten since last night, that you talked about this matter?

A. No.

Q. Do you recall answering this question: "Q. Did Mr. Kretske ever ask you if you ever got the two thousand dollars to pay him?" Do you remember that last night?

A. I might have, I am trying to recall. I said I talked to him about that difference.

Q. What did you say about the balance?

A. Nick stated to me, he stated he did not have the money he thought he had, and he did not have the two thousand dollars.

Mr. Stewart: Just a moment. Will you allow me to interrupt?

Mr. Ward: Certainly.

Mr. Stewart: Your Honor, when Mr. Ward put these convicts on, I did not object, but I knew your Honor would rule that possibly they would be a little reluctant. Here he hasn't a reluctant witness—

The Court: The last two answers indicate he is a little reluctant. Objection overruled.

Mr. Ward: Q. Did you go up to Wisconsin and try to get that other two thousand dollars from Nick Abosketes?

A. I went up to Wisconsin by an appointment made by Nick. He called me and I met him there.

Q. Was that about the two thousand dollars?

A. No, he had different things in mind and wanted me to visit round with him. I met him at the hotel there. He was busy going about, talking to gentlemen, to differ-

ent ones. The conversation might have come up about that balance.

Q. Well, you say it might have come up. What makes you say that?

A. I don't know, I don't know when, where or how. I have talked to Nick about the balance of the money, I am trying to recall. He did not have it. It is not definite in my memory because it meant nothing to me. I did not run after the man, trying to make him do those things.

Examination by the Court.

Q. You did all those things without compensation?

A. Yes. I thought I might get a fee after they made out the escrow.

Q. From whom?

A. I thought the attorney.

Q. Did you have any understanding about what compensation you might receive for the three thousand dollars or the two thousand dollars?

A. Not then. There was possibly some mention afterwards that I might be compensated for it.

Q. And you received no compensation whatever for handling that matter?

A. No.

Q. No part of that three thousand dollars?

A. No.

Q. No sum was ever paid to you by Mr. Kretske or anybody else?

A. No.

Direct Examination (Resumed) by Mr. Ward.

Q. Didn't Mr. Kretske tell you to get the five thousand dollars?

A. I don't know, he might have said the work was worth that.

Q. Do you recall a long conversation last night in the District Attorney's office?

A. I might recall some of it. They asked many questions.

Q. Do you recall Mr. Devereux asking: "Q. Didn't

Mr. Kretske tell you to get five thousand dollars from Nick? A. Yes, sir." Do you recall that?

952 Mr. Stewart: May I object? He has no right to bring before this Jury what was said in the District Attorney's office.

The Court: Objection overruled.

Q. Do you remember that question?

A. I remember that question. I am trying to recall the conversation.

The Witness: I do recall a figure of that kind, how emphatic it was I don't know. That is my signature. That is true. He did talk to me about the five thousand dollars. When I paid the three thousand he might have mentioned, "Is the man going to pay the other two thousand." I repeated the man's exact words, that he has no funds, did not have the money people thought he had. I never tried to contact Nick Abosketes to get the balance of the five thousand dollars. I never went to Wisconsin and tried to contact Nick Abosketes. He always made the appointments. Nick always contacted me, I did not contact him. When he contacted me I said, "I understand there is a balance to be paid." He said "I don't have the funds and can't pay." That balance was to be paid to the attorney for representing him. I was going to give it to Kretske. All these conversations that I had and all this activity was between the first of January, 1938, and it might be the fall of the year 1938. Prior to this transaction with Mr. Kretske, I did not have any other business dealings with him.

Examination by the Court.

Q. I would like to know a little more about this escrow agreement. Did you have any talk with Mr. Kretske about what services he was to perform for this money he received from Nick Abosketes?

A. No, sir, he was just to represent the man, and for any matters coming up in Chicago or pending in Chicago, he was to be his attorney and represent him.

Q. Was there any reason why he was to get that amount of money? Was anything said to Mr. Kretske?

A. I would not know.

953 Q. As to why that money was not paid directly to him?

A. No, sir. I don't know what the reason was, except perhaps, that man Nick—

Q. What condition was to be performed before you turned over the money?

A. No conditions by anyone. There was no agreement how or where. I was to hold that money.

Q. If it was in escrow, it was to be paid over on condition or something having been done?

A. There were no agreements, nothing outlined with me by the parties.

Direct Examination (Resumed) by Mr. Ward.

When Nick Abosketes came into my office and there was some mention of an escrow agreement, I knew that money was to go to Mr. Kretske. I also knew that Kretske had an office, and where it was. I might have made an appointment with him. I say I might have because I met the man different times on the street, I met him in public places and have run into the man. He came to my office once or twice. I got the three thousand dollars and put it in the vault in my office. I kept it in the vault in my office all the time. My telephone number in 1937 and 1938 was Dearborn 2508.

Q. Do you know a man by the name of Ed Wroblewski?

A. No.

Q. Did anybody ever call you in your office, naming Ed Wroblewski?

Mr. Stewart: I object to that.

Mr. Ward: Q. Did anybody ever call you and say they were Ed Wroblewski?

Mr. Stewart: May I have a ruling, Your Honor?

The Court: Objection overruled.

A. I don't remember.

954 Mr. Ward: Q. Do you know a man by the name of Ed Sparrow?

Mr. Stewart: I object, Your Honor.

The Witness: A. No.

The Witness: I know Albina Zarrattini. I became acquainted with her about two and a half years ago, when someone sent her to my office. She said some friends of hers asked her to come in and see me. It was a matter she had with the immigration department on citizenship. I don't recall the name of the party who sent her. She

mentioned that someone sent her, that is the way I accepted her. She stated her case. I was not admitted to practice before the immigration board. I am admitted to practice before the Treasury Department. I might have written letters regarding immigration matters, to find out the status of clients. She visited me a dozen times, with home problems, household problems, or the purchase of a building.

Q. Did she ever talk about being in liquor trouble?

A. Yes.

Mr. Stewart: I object, Your Honor. That is conversation with people we don't have anything to do with.

The Court: Objection overruled for the time being.

Mr. Stewart: Your Honor, as your Honor know, this is not even mentioned in the indictment and not in the Bill of Particulars. In view of the fact that your Honor appointed me for Mr. Kretske, I am not prepared to cross-examine. May I postpone it until some other time?

The Court: Yes you may.

(Witness temporarily excused.)

NICK ABOSKETES, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Nick Abosketes, I am 50 years old, at the present time I am an inmate in the Federal Penitentiary Camp in Idaho. I was convicted in Superior, Wisconsin 955 consin before Judge Stone, presiding in this trial.

In 1937 and 1938 and prior thereto I was selling sugar. To a certain extent I had something to do with a still in Illinois. I guess it was in McHenry County, maybe it was the Murdock Farm. I don't remember when the still was operating there. I know Frank Brown and George Stassus were two of the boys that were convicted in that case. In January, February and March, 1938 I was living in Waupon, Wisconsin. I lived there until the time of my conviction. I was never indicted with reference to any still in the Northern District of Illinois. I know a man by the name of William Brantman. I met him in February 1938 right after the trial they had for this still in Illinois.

Q. In February of 1938?

The Witness: I met him at the Bismarck Hotel. There was another man by the name of George. I had seen him several times. The first time I met George was about that time. I met him just once. I do not recall where.

Q. Now before you met George, how did you happen to come to Chicago?

A. This Mr. Brantman called me that I should go to Chicago.

The Court: Who called you?

A. Brantman.

Q. Mr. Brantman?

A. Yes.

Mr. Ward: Where were you at?

A. The Plankinton Hotel, Milwaukee.

Q. How long after that conversation did you come to Chicago?

A. The next day.

Q. Did you see Mr. Brantman?

A. I did.

The Witness: I met Brantman at the Bismarck Hotel, and from there we went up to his office at 10 S. La Salle Street. He explained to me, I am going to be in 956 trouble in this District.

Q. He said you were going to be in trouble in this District?

Mr. Stewart: Your Honor, I object to conversation between these people outside the presence of any defendant. May I be heard on that a moment? It evidently is going to be coming up right along.

The Court: Yes.

Mr. Stewart: I want to ask for the privilege of postponing the cross-examination. I had no opportunity to talk to Mr. Kretske. He is going to take the stand and deny getting \$3,000.

(Whereupon argument and proposed testimony and objections to it were heard by the Court outside the presence of the Jury.)

The Court: I think we will hear the testimony of this witness before the Jury. Bring the Jury in.

Mr. Stewart: The record shows our objection. Your Honor said our record might be preserved and I will not need to make any further objections.

The Court: No.

Mr. Balaban: The very objection to the evidence sought

to be adduced here is it is in the nature of hearsay, made out of the presence of the defendants.

Mr. Poust: And for the further reason, this is not mentioned in the Bill of Particulars.

The Court: Let the record show those objections are made for and on behalf of all defendants.

(Whereupon the following proceedings were had in the presence of the Jury.)

Examination by the Court.

I met Brantman for the first time in the Bismarck Hotel. I received a telephone call from somebody representing themselves to be Mr. Brantman, while I was in the Plankinton Hotel. That call came from Chicago, and I went to Chicago, and met Brantman, a fellow by the name of George, was with him at the time. From there I went to Brantman's office at 10 S. La Salle Street, in Chicago.

Direct Examination by Mr. Word.

Q. What was said by Mr. Brantman to you in his office?

A. Well, he is always telling me I will be in trouble, I will be indicted in this District here, and he had it very good, he had his information, from a fellow who knows all about it. It was the first time he told me. I did not pay much attention, I listened to the man about an hour and went back to Milwaukee. Later he called me again.

Examination (Resumed) by the Court.

Q. What did he say to you about why he believed you might be involved in this still?

A. At that time, twelve fellows had a trial and Mr. Brantman told me they had testimony, and in the beginning I was interested in the still.

Q. Did he tell you why?

A. The next meeting, he told me Frank Brown—

Q. Tell everything he said about this matter at the first meeting.

A. Well, we talked about it and he thought it takes five thousand dollars. I returned to Milwaukee and later

about a week, I come back again the last part of February. When I got back again, he said Frank Brown broke down and talked all he knows, like I did hire Brown and sent him down to Illinois to get that farm and put in that still. He said, "They have the goods on you, Mr. Glasser has got it out of Brown." So I talk to him some more and did not know whether to believe it or not, but was much convinced. Mr. Brantman after that left for Hot Springs, Arkansas.

Q. You say you were convinced. Up to that time, did you know that Brown was the man? You had hired Brown to rent this farm?

A. Yes, sir. Then when he was gone, he returned and called me and said I was going to be indicted, "Better come through"; so I brought that money and give to him and got the receipt.

958 *Direct Examination (Resumed) by Mr. Ward.*

Q. Is No. 134 the receipt you got from Mr. Brantman?

A. Yes, sir.

Q. Now, what was said about the receipt? What was said about that?

A. I asked him if I should have receipt and he said, "All right if you want one, I will let you have it." So he made receipt and gave me. I was supposed to give two thousand dollars more at later date.

Examination (Resumed) by the Court.

Q. Did he tell you what he was going to do with that money?

A. He was to pay it out to stop the indictment.

Q. Did he tell you who he was paying it to?

A. That I don't know, I did not go that far.

Mr. Ward: Q. I think I asked whether you were indicted in the Northern District of Illinois, and I think you said no.

The Court: What is the fact? Was he or not?

Mr. Ward: He was not.

The Court: Q. These meetings you had were some time during the month of February, 1938?

A. Yes, sir, March and sometime in April, too.

Q. This receipt is dated April 19th, 1938?

A. Yes.

- Q. That was when?
A. When he returned from Arkansas.
Q. That was when you paid the money to Brantman?
A. Yes.
Mr. Ward: Q. Now, when did you go to prison, Nick?
A. January 3, 1939.
Q. 1939, and you were sentenced when?
A. First time?
Q. When did you plead guilty?
A. I was sentenced the 26th day of September, 1938.
959 Q. And this all happened prior to that time?
A. Yes.
Q. All about Brantman?
A. Oh, yes.
Q. In 1937, did you have occasion to be in and around Waupun?
A. Yes, it was my home there.
Q. How long did you live at Waupun?
A. About ten years.
Q. That is Waupun, Wisconsin?
A. Yes.
Q. What is the population of that town, if you know, approximately?
A. About four thousand.
Q. Do you know the chief of police up there?
A. Yes, I do.
Q. In 1937 and 1938, what was his name?
A. Tezloff.
Q. Did you have a conversation with him at any time before coming to Chicago?
A. With who?
Q. With the chief?
A. No, I never talk with the chief.
Q. Well, did you know that Mr. Glasser was looking for you up there?
A. He asked somebody when he was up there, somebody tell him if I was in town.
Q. Who asked about you?
A. Mr. Glasser.

Cross-Examination by Mr. Stewart.

I know what an escrow is, I understand by escrow, he stops being indicted. Escrow is not where you put

money up to see what happens, and if what you want happens, the other fellow gets the money. It is 960 nothing like if he does not I get the money back. I don't know.

Mr. Ward: If your Honor please, I don't think the Chicago Title and Trust Company would approve of Mr. Stewart's definition of an eserow.

The Court: Proceed. If necessary, the court will define it later.

The Witness: The first time I started bootlegging was in the fall of 1932. Those twelve people were convicted the first part of February 1938, they were being held over here in the jail after they were convicted. It was about ten days and two weeks after they were convicted that I got a telephone call from this man Brantman to come to Chicago. I did not know this Mr. Brantman before. When he called me he says he knows I was interested in that case and knows something about me through other people. Before that time I did not know much about Mr. Glasser, only what I saw in the paper. I don't know him personally today. I never had a conversation with him.

Q. When Mr. Brantman got you down to Chicago, did he, Brantman, tell you how he, Brantman, happened to be mixed in your affairs? Did he tell you about that?

A. To be honest, he explained to me—the racket I was mixed in, we always take a man's word. I confess and tell him exactly.

Q. Did Brantman tell you he did some accounting work for Capone or Humphries?

A. No.

The Witness: He did not in any way introduce himself so that I could trust in connections, I did not know, I was not interested in that.

Q. Nick, you would not pay \$3,000 to anybody to fix your case, would you?

A. To be honest, there were lots of doings like that, fellows like us. I hope to be gentleman when I come home.

Q. You would pay money to somebody who would promise you a fix?

A. There was more than a fix, if indictment was stopped. He knows Mr. Glasser and that was all there was to it.

961 Q. You are hoping this man had the right connections in Chicago and would give your money to the right people and stop the indictment, is that it?

A. I put up the money, I was hoping he had somebody.

Q. You were just taking a chance that he had the right connections?

A. Not taking chance, I thought I had right party.

Q. Tell the court and jury what made you think he was the right party?

A. It seems to me he knows everything right up to the minute. In that same thing he tell me about Brown, one of the men in the penitentiary tell his wife same day and it come to me next morning. I thought he was very well posted.

Q. The wife of who came to you and told you?

A. Of this other defendant that was in County Jail.

Q. Was in the County Jail?

A. Yes.

Q. So the wife of one of the defendants in the County Jail—what is the name of that defendant?

A. Statusus.

Q. Mrs. Status, S-t-a-t--s-u-s, we will call it that. She came to you where, in Wisconsin?

A. Yes.

Q. Was that the morning after you had been in Chicago?

A. The day after.

Q. And she told you that this man Brown had been talking to the Federal people?

A. She said they had been downtown at the District Attorney's office and he talked about me.

Q. You could tell from what Mrs. Statusus told you, that Mrs. Statusus knew what the facts were about you?

A. No, I don't say that. What I am trying to tell you, the things, the facts what he tell me, I thought he possibly had first class information some way, how he got it, I don't know.

Q. How he got it, you don't know?

A. I can't swear to it, because I don't know.

Q. You would not have given your money if you did not think he had that kind of connection, would you?

A. Of course, if I thought he was capable and had his connections.

Q. What connections did he tell you he had?

A. He had connections to stop things like that, he had connections in the Federal Building.

Q. He told you that?

A. Yes.

Q. He told you if you would give the five thousand dollars,—he wanted five thousand dollars, didn't he?

A. Yes.

Q. He told you if you would give up the five thousand dollars, through his connections, he could stop the indictment, is that right?

A. Yes.

The Witness: You see you can't believe people like that one hundred per cent, you know that. You don't put that money in the bank. The receipt was alright, but not as good as the bank. The bank don't give you that kind of a deal. I don't know how to explain. You are never sure whether a man is telling you the truth or not, of anything like that. When I came back home and the wife of one of the prisoners came, I began to worry about the fact that this man might be talking about me. About thirty days or forty days or so after that I came to Chicago and gave Mr. Brantman my \$3,000. I didn't expect to get it back. He told me he wanted it to give to somebody in the Federal Building to fix the case. I more or less expected never to get it back again, you don't get nothing back. I asked for a receipt, Mr. Brantman wrote that out for me. I did not hire him for any services as accountant. He wasn't going to render me any service. The kind of receipt he gave me, you are lucky if you get one. You are lucky to get any kind. I thought I had something
963 more, possibly, than the average fellow gets in that business. I know what it means "to be shaken down".

I could not be sure that this man was not putting a shake on me and be honest about it. I could not go over and ask Mr. Glasser if Mr. Brantman was able to fix him. I thought Brantman could, though. I was kind of hoping he could. If I did not think he could, I would not have given him the money. After I gave him the money I saw him in a week or two. He was down in Milwaukee. He made the appointment. He called me again at the Plankinton Hotel. He say it look like everything in control, stop everything. But usually he wanted more money. He says, "Everything is alright." As a courtesy to that kind of stuff, I did not ask him the name of anybody he gave the money to. When you get protection from agents I guess you don't ask too many questions.

Q. So all during your conversation he never told you who he paid the money to, and as a courtesy, you never asked him?

A. Yes, that is right, outside of what he tell me about Brown, he had that information.

The Witness: At that meeting after I paid my \$3,000, he gave me the impression that he had already paid my money over to help me. He also told me that the party was wanting the rest of it. I am sure that is the procedure on that. That was about two weeks after I gave it to him. I told him at that time I didn't have as much money as people thought I had. I think the next time I saw him was in Waukegan, the first part of June. I made that appointment myself, I wanted to find out about how things were going, and I called him at his office, and told him to meet me in Waukegan at the hotel. I met him in the lobby, he told me the same, that he had paid my money over to the right people, and they were screaming and wanted the rest. I told him again I did not have the money. That is all that was discussed. I did not see him no more. I was in trouble at home. I was there two or three months and go to the penitentiary. That was the end of that, and also the end of my money. Judge

Stone gave me three years, I have fourteen months in.
964 I don't know Mr. Kretske, I saw him once, at the Sherman Hotel, four or five years ago. I don't know if I see him today, I never had any conversation with him, whether legal or illegal, just a matter of meeting him, that is all. When I met Brantman in the Waukegan Hotel he did not give me any name of who he gave the money to, I did not ask him, that's just the way they do those things. They make them a little mysterious, I suppose.

I know Barney Clooman, he is a Federal Investigator, I was not paying any money to people supposed to protect me when I was running stills. I had the reputation for that but never do it. I don't know if my partners did. Nobody ever approached me before where he was going to take care of a matter, and put up money to fix the case. Others didn't do it that I know. In fact we don't have those things in Wisconsin. I don't say we run our stills honestly, but we don't have that up there. If this man Brown told the truth about me, he might possibly say I sent him to rent the fam. I did not tell you that. I don't care how much you know about that. If Brown told the

agents the truth about me I don't know what he could say, whatever he feels like. I was not a partner in that still, I was just selling sugar, that was good enough for me. Enough to convict me. That was my connection, that I sold sugar.

Q. Is it true that you sent this man to pick out the farm?

A. No. Mr. Brantman said I was implicated, and it is alright, they could indict me, and I have a lot of trouble, even if I never have anything to do with it. If I had nothing to do with it or not, he said, "You will be indicted and you must be in trouble".

The Witness: Maybe we talked about it, I never was on that farm, never was in Illinois. Three or four of that group would know about my connection with the still. I suppose they would see me talk about it, when we meet some place. I bought the sugar, some of the boys that was connected with the still, dealt with me, I was satisfied was paying me for the sugar. Brown paid me. As a 965 matter of fact, two or three of them who were convicted, knew that I was selling sugar, if they want to tell the truth, that was all they could say about me in that connection. I know a man named Canzenbach, he is a very old man, about sixty seven, a carpenter. He could not get work around home and he was willing to do a little carpentering, so he was down there and they took him down to do a little carpenter work before they put in the still, he was convicted and got a year and a day. I guess when Mr. Glasser was up in my part of the country, he was looking for Canzenbach.

Q. You learned that was what he was up there for, didn't you?

A. Either Mr. Canzenbach and possibly looking for he too. That is a matter I don't know, what Mr. Glasser had on his mind.

Q. You got the information from other people, didn't you?

A. Just where you get it,—you can't get it direct, you know.

Q. Now, among those twelve men that were arrested in that still down there, that you were afraid you would be implicated in,—by the way, where was that still down here that you were afraid you would be implicated in?

A. If I be honest, I don't even know.

Q. Was it the Murdock farm?

A. I don't know.

Q. You know that Mr. Glasser prosecuted the men who were convicted in connection with that still, don't you?

A. Yes.

Q. Seven of them got five years?

A. Yes.

Q. Four of them got two and a half years?

A. Yes.

Q. And one got a year and a day?

A. Yes, sir.

Q. Now, after they were convicted, did you get information from anybody else except the wife of that one prisoner and this Mr. Brantman, that these men in the jail might talk about you?

A. Well, not exactly, but you can always expect it.

966 Q. You are always kind of afraid of that?

A. Yes.

Q. Especially when they got convictions, that makes it even more dangerous, is that right?

A. I suppose.

Redirect Examination by Mr. Ward.

Q. Mr. Canzenbach, is the old man who did a little carpenter work, and Mr. Glasser got a year and a day for that man, is that right?

A. Yes.

The Witness: When I was up there at the Sherman Hotel, I can't remember the date, I saw Mr. Kretske with this man whose picture you show me here, that is Fred Blumenthal, he died. That was the Sherman Hotel in Chicago.

Q. Did you know Blumenthal was removed from Milwaukee one time by the Federal Government in a proceeding?

A. Yes, sir.

Q. That is the same man you are talking about?

A. Yes.

Q. Now, regardless of what Mr. Glasser had on you or did not have, Nick, you thought Mr. Brantman's information was first class, and that is why you paid your money, is that right?

A. Yes, that was always right there, that information, that sounds very strong like he knows what he is doing.

Recross Examination by Mr. Stewart.

I know the Sherman Hotel, in Chicago.
(Witness excused.)

EDWARD WROBLEWSKI, recalled as a witness, on behalf of the Government, having been previously sworn, was examined and testified as follows:

967 Direct Examination (Resumed) by Mr. Ward.

I don't remember any conversations I had with Mr. Glasser. I went home from his office and that was the end of that as far as I was concerned. I recall my brother being indicted and his case coming up before Judge Barnes. I was not there at the trial. I remember he was indicted but I don't remember the month or day or anything. In my dealings with my brother I handled the money. I paid out the money for expenses and so forth.

Q. Now were you ever in Mr. Kretske's office in 1937?

A. Mr. who?

Q. Mr. Kretske?

A. I don't know Mr. Kretske.

Q. You don't know Mr. Kretske, you don't remember him at all?

A. I don't remember the name.

Q. Well, than man there (indicating).

Mr. Stewart: Stand up please.

(Defendant Kretske arose.)

A. I don't remember seeing the gentleman.

Mr. Ward: Q. You don't remember ever seeing him?

A. No.

Q. Remember seeing him yesterday?

A. Where at?

Q. Right here in this court room.

A. I never seen him before, I don't remember seeing the man before.

Q. You mean before now, or when?

A. Until just this minute.

Q. This is the first time you ever saw him?

A. Yes.

Q. Did you ever go to his office with William?

A. No, sir.

Q. Did you ever pay any money at his office, for William's case?

968 A. Whose office?

Q. Mr. Kretske's office?

A. I don't remember Mr. Kretske's office, where his office it, or the name, I don't recollect.

Q. You testified before the Grand Jury in this case, didn't you?

A. I was before them, yes.

Q. In this case? And you refused to testify at all?

A. Under my constitutional rights, yes.

Q. You claimed your constitutional right not to testify, and you did not testify, that is right, is it not?

A. Yes.

Q. Well, remember seeing Mr. Kretske in Indiana when your case was up? And if Mr. Kretske had nothing to do with your case, you did not hire him?

A. I don't know anything about it, sir.

Q. If he went down to Indiana, you did not ask him?

A. Mr. Kretske?

Q. Yes, sir.

A. I don't know anything about it.

Q. You don't even remember it?

A. No.

Q. You never heard the name?

A. When I was questioned by Mr. Bailey.

Q. When was that?

A. Last March, April or May.

Q. Where?

A. Lewisburg, home, and the Alcohol Tax Unit, the new Post Office.

Q. He mentioned his name to you, did he?

A. Yes.

Q. Did you know that your brother was sentenced to three months and a fine of \$500 in the case he was brought before Judge Barnes in?

A. Yes.

969 Q. Did you know Mr. Glasser recommended probation in your brother's case?

A. Yes, I was told by my brother, yes.

Q. Now, was that after the case was over that you talked to him?

A. About when?

Q. To William? You don't remember that?

A. I don't remember that.

The Witness: The telephone number in my house in 1937 and 1938 was Homan 1035, that was an unlisted number. My name was not in the book. I don't know William Brantman, I never heard of that name.

Q. Did you ever call him up or see his office?

A. I don't remember calling that.

The Witness: Homan 1035 was when I lived at 10545 S. Wallace Avenue. I have not been able to refresh my memory on how I happened to meet Roth. I remember seeing Mr. Roth in Indiana. The sum of \$250.00 I paid Roth was for both my brother and myself. I recall when I hired Mr. Roth in my case in Indiana. I could not say whether it was before I was indicted or after I made bond, I don't remember that. I had a conversation with Mr. Roth regarding his going down to Indiana for me before I was tried. That was the day of the trial, the day of the hearing, and so on. I don't remember the exact date. I don't remember if I got a receipt from Mr. Roth or not. I just keep things like that in my head, of how much I paid for attorney's fees. I recall while we were on trial, having a conversation with Mr. Roth, where he told me he was going down to Indianapolis to look into my case for me. I appealed my case and was out on bond pending the appeal. I was in Lewisburg when I received notice that my conviction was affirmed. I remember getting a letter from Mr. Roth, I don't recall the date. I was supposed to be serving time on both concurrently. I was in Lewisburg when my conviction was affirmed, in the Northern Indiana case. For a while, William was out on bond, and I was in the Penitentiary. I don't know anything about that trip William made with Mr. Roth and Mr. Kretske to Indiana.

When I hired Mr. Roth I told him about my financial standing. I talked over my ability to pay with Mr. Roth. He knew my financial standing, and that I was not able to pay more than \$250.00. My brother who gave the name of Burba was convicted in April, 1937. It was when I was preparing with Mr. Roth for my case concerning Indiana that I first met him. That was about a year after my brother was convicted before Judge Barnes.

Q. So when your brother had trouble, and was in before Judge Barnes, you didn't even know Mr. Roth?

A. I did not.

Q. And then a year and a half went by before you had occasion to hire him?

A. That is right.

Q. So Mr. Roth had nothing to do with your brother's case as far as you know?

A. On the sentence of ninety days?

Q. Yes, sir on that case.

A. No.

Q. He had nothing to do with that?

A. No.

The Witness: Mr. Bailey talked to me many times, some of those times were in the Penitentiary, where I was doing time. My sentence is eighteen months. I received two sentences in two different districts in Indiana. Mr. Bailey was present and assisting the Government as he is here. Both of my cases arose out of the same alcohol. I had an application for parole in, it has been denied. I don't remember if Mr. Bailey discussed that with me. I don't remember if he said anything about my parole, about having my parole papers in his pocket, and holding it up. He asked me about the Kretske matter, if I knew anything about it. He questioned me, and he said that I knew enough to shock a court-room, and I didn't know anything about the matter. He repeated it a few

971 times, and I never did know anything about it. Mr. Bailey has been us to the Penitentiary twice and I have seen him four times. Twice in one day, and once one day, and then the following day before Mr. Bailey left Pennsylvania, and I told him each time that I didn't know anything about Mr. Kretske.

Redirect Examination by Mr. Ward.

I recall going to the Alcohol Tax Unit with my brother William just before the trial at Hammond. Frank Hodorowicz asked me to go over there. I was there three times. The first time I was there with Frank Hodorowicz. I had a conversation there with Mr. Bailey and when I left Mr. Bailey's office I was going to the Federal Bureau of Investigation, I did not go there, I went to Roth's office and talked to him. I didn't go back to the F. B. I. after I left Mr. Roth's office, that was after I was convicted in the Southern District of Indiana and the Northern District. Both indictments in Indiana were for

conspiracy. I went to the Alcohol Tax Unit with Frank Hodorowicz, the day I made the bond in the building, here, Frank Hodorowicz happened to be in the building, and he said he wanted to see me. So I said what is it all about. I went over there.

Q. Now your father and mother lived out there on 118th Place, did they not?

Mr. Stewart: Your Honor, I didn't ask him anything about his father and mother, it is not redirect examination. Can't we hold Mr. Ward down a little on that?

The Court: It is not proper redirect.

Mr. Ward: Well, it is not, your Honor. I will ask permission to ask it.

The Court: Well, proceed.

Mr. Ward: Q. I am just going to ask one more question about it. Your brother John lived over there, did he not?

A. Yes.

Q. Do you know anything about that Hodorowicz still which was a couple of doors from—

972 A. No, sir.

(Witness excused.)

Mr. Stewart: Mr. Ward, is this Mr. Campbell?

Mr. Campbell: Yes, sir.

(Whereupon the Jury retired from the Court room.)

Mr. Stewart: We have a formal motion concerning the testimony of the next witness, whom I understand is Mr. Alexander Campbell, and may I read it, Judge?

The Court: Yes, sir.

Mr. Stewart: "United States *versus* Daniel Glasser, *et al.* Now come all of the defendants herein jointly and severally by their respective counsel and move the court to exclude the proposed testimony of one, Alexander Campbell, offered by the prosecution on its behalf on the following grounds based upon the opening statement of the prosecution stating the proposed testimony of the said Alexander Campbell:

1. That the said proposed testimony is not a declaration made in pursuance of the common object of the alleged conspiracy.

2. That the said proposed testimony is not part of the execution of the alleged plan of the alleged conspiracy.

3. That the fact that the declarant is indicted adds nothing to the competence of his alleged declaration.

4. That the fact that one alleged conspirator tells an-

other something allegedly relevant to the alleged conspiracy does not make the alleged declaration competent.

5. That mere conversation of an alleged conspirator with another does not implicate him or others in a conspiracy with others not independently shown to be a party to the alleged conspiracy.

6. That no independent proof of the alleged conspiracy has been offered.

7. That the proposed testimony is concerning a transaction not related to the alleged conspiracy.

973 8. That the Bill of Particulars setting forth the causes, persons and places involved so that the defendants might be prepared to meet the particulars alleged, does not set forth the case of the United States versus Edward Wroblewski and William Wroblewski in the Northern District of Indiana.

9. That the proposed testimony is prejudicial and will not tend to prove any issues in the above cause."

I might add to that that it wouldn't be admissible as against the other defendants who are not concerned in the transaction or conversation.

(Whereupon arguments of counsel were heard.)

Mr. Callaghan: I want to record a further objection. This indictment charges the conspiracy began in July 1935, and it continued up to the date of the indictment, despite the fact the proof shows here that Kretske resigned as an Assistant United States Attorney in April, 1937, and Glasser resigned as an Assistant United States Attorney, and ceased his duties in May, 1939.

These conversations which are now proposed to be introduced into this record are conversations which are supposed to have occurred, as I understand it, from the opening statement in August of 1939. Necessarily, of course, Glasser having resigned in May, 1939, any conspiracy to defraud the United States of the service of an Assistant United States Attorney ended, and at the time he ceased being an Assistant United States Attorney, and of course these conversations in August, 1939 are not admissible or not competent to prove a conspiracy.

The Court: All right, we will hear the testimony of the witness now, and we can pass on it later.

Mr. Callaghan: The record will show that upon this motion the objection is overruled at this time?

The Court: Yes.

(Whereupon the proposed testimony of Alexander Campbell was taken outside the presence of the Jury.)

974 The Court: You may bring the Jury back. The testimony will be submitted to the Jury.

(Whereupon the Jury returned to the court-room.)

Mr. Callaghan: For the purpose of the record, we need not repeat our objection, the objection will stand to this entire line of examinaion?

The Court: Yes, sir.

Mr. Poust: The record is clear that we are objecting to this?

The Court: Oh, yes, yes. You may proceed.

ALEXANDER CAMPBELL, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows.

Direct Examination by Mr. McGreal.

My name is Alexander Campbell, I live in Fort Wayne, Indiana. I am an assistant United States Attorney, for the Northern District of Indiana, my offices are located at For Wayne, Indiana, South Bend, Indiana, and Hammond, Indiana. James R. Fleming was the United States Attorney for the Northern District of Indiana, he has two assistants. Myself and Lucas Weigert, of Hammond, Indiana. Our Grand Jury meets from two to five, or six times a year, depending on the amount of work to do. I know the defendants Alfred E. Roth and Norton I. Kretske.

I recall two defendants in my District by the name of Edward Wroblewski, alias Eddie Sparrow, and William Wroblewski. They were charged with conspiracy to violate the internal revenue laws of the United States. The indictment was returned in April, of 1938.

On September 30, 1938, I was in the Federal Building in the United States Attorney's office at Fort Wayne. I got there about 10:00 o'clock and called Mr. Alfred E. Roth at the Keenan Hotel which is about a block away from the Federal Building. I had a conversation with Mr. Roth on the telephone. Mr. Roth stated to me on the phone that he was Mr. Roth of Chicago, that he had come down on the train, I think that night or day, and I was in South Bend, and he waited to see me, because he
975 wanted to go back to Chicago early the next morning and asked me if I would see him that night in my office

concerning a case. He came to my office between ten and a little after. He was alone, there was no one else in my office.

Q. Now will you tell the Court and Jury just what was said by Mr. Roth and by yourself at that time?

A. Mr. Roth came into the office and greeted me and stated that he wanted to talk to me about two clients of his. The Wroblewski brothers of Chicago, and he stated—and he asked me whether or not the Wroblewski brothers had been indicted, or what the status of their case was. I told Mr. Roth that I did not remember the names, and had no recollection of the names at that time, therefore, I said I did not know if they had been indicted or not. And Mr. Roth asked me at that time if I would check the records then to determine whether or not the Wroblewski boys had been indicted by the Federal Grand Jury. I told him that my secretary, Miss Stilwell, was not there at night, and had gone, and I knew nothing about the filing, and I couldn't find the file, but that if they were indicted,—or that in the morning I would check the file, have the girl check the files, and if they were indicted I would send him a copy of the indictment to his office in Chicago.

Q. And was that all the conversation that took place at that time?

A. I think that is about all.

Q. Well, after that conversation did Mr. Roth leave?

A. Yes, he did.

Q. Did you remain in your office?

A. Yes, I stayed there about fifteen minutes or so, looking over the day's mail.

Q. And what did you do then, after you finished your work?

A. I left my office and went out in front of the Federal Building at Fort Wayne, to get into my car, which was parked in front of the Federal Building.

Q. And when you arrived at your car, did you see anybody?

976 A. I saw Mr. Roth.

Q. And was anything said at that time?

A. Yes, sir.

Q. What did he say and what did you say?

A. Mr. Roth stated to me at that time, in front of the Federal Building, in Fort Wayne, that he was not ready to retire, was not tired, and didn't want to go back to the hotel, and was standing out there enjoying the evening,

and said that he had been thinking over something to ask me. He stated that he didn't know whether to ask me or not. And I said, "Well, Mr. Roth, if you have anything on your mind, get it off." And he stated to me then, "Well, Mr. Campbell, if you find, when you check the records that the Wroblewskis are not indicted, and that their case has not been presented to the Federal Grand Jury, isn't there some way that some arrangement can be made so that they will not be indicted, isn't there some way we can handle this so it does not have to be presented to the Jury." I said, "No, these Wroblewski boys, brothers, if they are not indicted their case will be presented in due course to the Federal Grand Jury, and if there is sufficient evidence the Grand Jury will probably indict them, and if they are indicted they will be prosecuted." Mr. Roth further stated, "Well, isn't there some arrangement that we can make? Isn't there some way that we can handle this?" He said, "I know all about Grand Juries. I know how they work, and isn't there some way some arrangement that we can make to handle this case?" I said, "No, Mr. Roth, that cannot be done, because the United States Attorney has a policy of presenting all cases to the Federal Grand Jury, that case will be presented in the regular channel as every other case is." Mr. Roth then said, "Well, suppose I raise my fee \$500.00 or \$1,000.00 and give it to you to handle this case?" I said "No, that is not being done in the Northern District of Indiana, that is not the way we operate." Mr. Roth then said, "Well, if you don't want to take the money yourself to handle this case, in that way, this is a campaign year, and I assume that you have campaign assessments to pay, the Fall campaign coming on and if you don't want to take this money yourself, 977 use it for your campaign assessment." I said, "No, Mr. Roth, that is not the way we operate in the Northern District of Indiana." Mr. Roth then said, "Well, that is the way we handle cases in Chicago sometimes." And discussed it with me further, and I said that that is not being done. "I don't care how you do it in Chicago, that is not the way we do it in Indiana." Mr. Roth then said, "Well, I meant no offense." And I went home.

Q. Now, what did you do the next morning?

A. The next morning I reported the incident, and the conversation with Mr. Roth to either Colonel Bailey of the Alcohol Tax Unit or the F. B. I., I think it was Colonel Bailey.

Q. Now, did you have a chance to check the records concerning that case in Indiana at a subsequent time?

A. I did.

Q. What did you find?

A. I found the next morning, upon my secretary checking the records that the Wroblewski brothers, Edward and William had been indicted in April, 1938 for conspiracy to violate the liquor laws.

Q. Now were those two Wroblewski boys brought to you in your district?

A. They were brought to trial in our district in Hammond, Ind. in December, 1938.

The Witness: I handled the prosecution. The case was tried before a jury, and the Wroblewski boys were convicted, then the case was appealed and the conviction was affirmed.

I was in Fort Wayne Indiana on the 10th of July, 1939.

Q. And about four forty-five on that day were you?

A. I was coming to the United States office in the Federal Building in Fort Wayne, Indiana.

Q. And did you have occasion to meet somebody at that time?

A. I did.

Q. Who did you meet?

978 A. I met Mr. Roth and Mr. Kretske.

Q. What was the status of the prosecution of the Wroblewskis at that time?

A. At that time, as I stated, the case had been affirmed, and I think they had been sentenced.

Q. And did you come up to your office?

A. Yes.

Q. And who went with you?

A. Mr. Roth, Mr. Kretske, Mr. Moss, who was with me at the time, and myself.

Q. And will you describe your office to the Court and Jury, that is, the lay-out of the office?

A. Yes, sir. From the main corridor of the Federal Building you enter a waiting room in which there is a counter, and then back of that counter is our Clerk, our secretary, Miss Stilwell, and then to the left is the private office of the United States Attorney.

Q. Now which office did you go into?

A. The United States Attorney's office. Private office.

Q. And who went in there with you?

A. Mr. Kretske, Mr. Roth and Miss Stilwell went in with me.

Q. Now, was there any conversation at that time?

A. Yes, sir.

Q. Will you tell the Court and Jury just what was said?

A. Well, Mr. Roth stated at that time that he wanted to talk about the Wroblewski case again. He stated that one of these brothers had been indicted, and either convicted or plead guilty in the Southern District of Indiana, along about the same time, and he asked me whether or not the sentence in the Northern District for this conspiracy case would run concurrently with the sentence in the Southern District of—Southern Federal District, and I stated to Mr. Roth I did not know anything about how the sentences were imposed or whether they were directed to run concurrently or consecutively, and anyway, I had no jurisdiction of the matter of sentences, that was up to the Court.

Q. Then what was said?

A. Well, we discussed further the Wroblewski case, that is the evidence of the appeal, and I think a couple of legal questions of the appeal, and Mr. Kretske, at that time, I think it was, at that time I think it was, at that time stated that in his office in Chicago where a man was indicted for a similar offense in another Federal District in the United States, while being indicted, or under indictment in Chicago, that ordinarily they would dismiss the Chicago case against the violator who had been sentenced in some other district, and I stated to Mr. Kretske that that was not our policy, but that we always indicted for similar offenses in the Northern District of Indiana, and then usually the Court gave a concurrent sentence.

Q. Now, at that point, did Miss Stilwell or Mr. Moss or Mr. Kretske walk out of your presence?

A. At that time I stated that I had a dinner engagement, and had to leave, and Mr. Roth and Mr. Kretske and Miss Stilwell and myself all got up from the private office, and went out into the secretary's office.

Q. Now, did you have any further conversation with Mr. Roth?

A. I did.

Q. Where did that conversation take place?

A. Well, after we had all gotten out in the secretary's office, Mr. Roth grabbed me by the arm and pulled me

back in toward the private office of the United States Attorney. We stood in the open doorway between the United States Attorney's office and the secretary's office, Mr. Moss was talking to Miss Stilwell, and Mr. Kretske was at the outer door of the office. And Mr. Roth stated to me at that time, asked me, I believe, if I knew Bailey, Special Investigator for the Alcohol Tax Unit, Bailey, and I said that I did, and he said, "Well, Bailey is conducting some sort of an investigation in Chicago, he is trying to involve a lot of Chicago people, he is trying to involve certain lawyers in Chicago, and he said, 980 "Can't you pull Bailey off? Can't you call him down here to talk to him and pull him off of this investigation?" And I said that I had no jurisdiction whatsoever with Colonel Bailey, he was in a different department. Well, he said, "I don't want to get mixed up in this investigation,"-- He said, "It will be a mess, and I don't think you want to get mixed up in it either." He said, "You know there will be some that will say that you were offered money to fix a case," and then he said, "There will be others who will say you asked for money to fix a case," and then he said, "Besides, there is a certain Federal Judge in Chicago that is going to remove Bailey anyway, because of this investigation." So he said, "Can't you do anything about that?" And I said, "No."

Q. Is that all of the conversation?

A. I think.

Q. Well, after that did Mr. Roth leave?

A. Yes, Mr. Roth left, Mr. Roth and Mr. Kretske both left after that conversation.

Q. And then how long did you wait there in your office?

A. Oh, I think I waited a few minutes probably, I didn't finish up the work, ten or fifteen minutes, and went away.

Q. And did you do anything the next morning?

A. Yes, sir.

Q. What did you do?

A. I called Colonel Bailey, or the F. B. I., and reported the incident as I had the previous time.

Cross-Examination by Mr. Stewart.

I was admitted to the Bar in 1928, Indiana is one of the toughest States in the Union to be admitted in. I was appointed Assistant United States Attorney in November, 1935, and have held office continuously since. I am a member of the Kiwanis Club, and Plymouth Congregational Church.

981 I remember when Mr. Kretske first met me there was something said about the fact that he had some business down at Plymouth, and that is how he happened to come along with Roth. There is nothing unusual about lawyers discussing the matter of what might become of their clients. The matter of how sentence should be served whether concurrently or consecutively, that is a question that is often discussed. There is considerable discretion vested with the Judge, he has complete control of it. Mr. Roth explained to me that the Wroblewski boys' two sentences involved the same lot of liquor, that they grew out of similar circumstances. He urged upon me that the circumstances were such that there ought to be a concurrent sentence. I have had that discussion before with other lawyers. The Federal Court practice varies in different states of the country because the District Court conforms as near as may be with State practice. We very often discuss the difference in the practice in our district with other people that have come from another district. I often meet lawyers who have been District Attorneys that are out in practice. They discuss with me what the practice is in their own district. I suppose Judges discuss that too. When Mr. Roth pulled me back in the office, he pushed me back against my will. He just grabbed me by the arm and pulled me around the door.

Q. Didn't you cry for help?

A. Why of course not.

The Witness: We discussed the fact about rumors about an investigation, I did not say at any time that that was nothing unusual for people in my official position were sold up and down the street at times. I didn't say anything like that.

I know it to be a fact, people outside not having any connection with me, will sometimes talk about a fix. That does not happen often. It happens once in a while. I

don't think I told Roth during my conversation with him that I didn't pay any attention to gossip.

982 Q. Now, when Mr. Roth was talking to you about the presentation of that case before the Grand Jury, you didn't know whether they had a good case or a weak case against those Wroblewskis, did you, you were not familiar with the case?

A. The case had already been presented, and they were indicted at that time, but I had forgotten it.

Q. You didn't know it. Did you present it yourself?

A. Yes, sir.

Q. But you had so many cases that that one had slipped your mind?

A. That is right.

Q. By the way, is it any part of your duty as a District Attorney to go out and do police work?

A. No.

Q. And the agents who work in your district, where do they work out of?

A. The agents that work in our district work out of Chicago,—Indianapolis, principally.

Q. And those that work out of Chicago, are they in Mr. Yellowley's charge, they are in the Alcohol Tax Unit?

A. Well, some of them work under Yellowley, and some directly, I think out of Washington.

The Witness: Exhibit 136 bears my signature. Mr. Roth said during one of the conversations that a certain Judge was going to remove Bailey.

Q. Well isn't it a fact that Mr. Roth was talking about the conduct of Mr. Bailey down in some other district down south?

A. No, he said there is a certain Judge in Chicago going to try to remove him anyhow, or try to get him out of the District.

Q. Was there anything said about a certain Judge down south, about Mr. Bailey, about a certain Judge down south putting Mr. Bailey out of his court because he was framing his case?

A. No, sir.

983 Q. There was nothing said about that?

A. No, sir. I think Mr. Roth told nothing about Bailey anywhere else, if I remember right.

Q. And something was said about how we do things in Chicago, Mr. Roth used that expression, did he?

A. Yes, that is right.

Q. He didn't name anybody, did he?

A. No, sir.

Q. And you didn't inquire into that any further, did you?

A. No, sir.

Q. During that meeting of July 10, with Mr. Roth, during that conversation did Mr. Roth say to you that he had not asked you to do anything that you couldn't consistently do?

A. No, he didn't.

Q. At the time you met Mr. Kretske, did you know at that time whether he was in or out of office as a District Attorney?

A. I think that he told me that he was out. I think he said I used to be an Assistant United States Attorney.

The Witness: I think Miss Stilwell heard part of the conversation. She is here. I have talked with her about what part she heard. She heard part of the conversation of May or July, 1939. July 19th when Mr. Roth came out to see me because he heard there was an investigation. Miss Stilwell is in the court-room.

Mr. Stewart: May we have her excused under the rule, Your Honor.

The Court: Proceed.

The Witness: Well, she told me that she overheard me stating something to the effect that that is not the way we do it in Northern Indiana, and she told me that she heard me tell him, to use this expression "Hell, no." I don't believe she heard anything Mr. Roth said. I don't know whether Kretske heard the conversation or not. He was standing over by the door. As far as I could observe he was not in it. The first time that Mr. Roth talked to me when he was talking about whether or not the indictment had been returned, it was just he and I alone,

984 on that occasion. Nobody was in a position to hear it at all. I don't know what was finally done with those sentences or if they were arranged so they could be served consecutively, because I wouldn't have anything to do with it. That would be for the Judge, who has the last conviction.

The rules permit me to carry on a private practice, but time does not permit. I have my name in a law firm in Fort Wayne, but I don't maintain an office. I am a member of a law firm there but I am inactive. If I had time

I could practice civil. Exhibit 137 is not my handwriting. I probably dictated this letter to my secretary, because my initials appear in the lower left hand corner, as does her initials. When a man is too busy, he dictates the letters, and they are signed by somebody else.

Redirect Examination by Mr. McGreal.

I graduated from the Indiana University, I am active in the Alumni of that institution.

Q. Do you hold any office?

A. National President of the Indiana Alumni.

Q. National President of the Indiana Alumni?

A. Yes, sir.

Recross Examination by Mr. Stewart.

The first conversation was about September 30, 1938, the second one was about the 10th of May, 1939.

(Witness excused.)

EDWARD FARBER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Edward Farber, I live at 5400 Madison Street, I know the defendant Norton I. Kretske for about ten years. I live at my present address about five years. I know a man named Harry Brown and one 985 named Jack Weber, I have known them since 1937.

I met them at my home. I had something to do with operating a still with them, and I was indicted for that with them. I was indicted and arrested in the latter part of 1938, the still was discovered in March, 1937. It was a 500 gallon still. We produced about 150 or 200 gallons. Exhibits 138 to 156 are photographs of the still I was connected with and indicted for. I think I started to work on that still in January, 1937.

I was connected with the Beisner still. I know a man named Widzes I was arrested in connection with that still I believe in November of 1937. I was caught right

on the premises at the time of the raid. Widzes was with me, and I was in an automobile. We were taken to some station on the north side. It was after I was arrested in the Beisner still that I was indicted with Dukett and Weber. I was not indicted in the Beisner case at first. My case was disposed of before Judge Holly. Mr. Glasser represented the Government, Weber and I pled guilty and were placed on probation. Dukett didn't plead guilty, he was represented by Mr. Roth. I was the first one to plead guilty in that case, and a period of about six or seven weeks elapsed before I was put on probation. The Judge did not ask Mr. Glasser anything about my case that I recall. I did not see Mr. Glasser at that time show these pictures to Judge Holly. I don't recall that he called the Judge's attention at that time to the size of the still. I was not there when Dukett pleaded guilty. I was present in the court-room when the Beisner matter was tried. I was tried on that case but I was on probation in the other case. I heard the witnesses testify in that Beisner case. I know that Widzes' fingerprint was found over the still on a lamp-shade. That is the same Widzes that was sitting in the automobile with me at the time of the raid. My nephew Dvorak, worked in that still, at the Beisner farm. I know the defendant Louis Kaplan about four years. I know Victor Raubunas since 1936. I know the defendant Horton since the latter part of 1938 or 1937. I met Kaplan and Raubunas at my home in the early part of May, 1937. I knew Victor Raubunas, and had some business relations with Kaplan, regarding a still at a green-house on route 14. Dewes and Raubunas were in that still with me about five weeks and then we got into the Beisner still.

Q. Weil, after the Beisner still was raided, did you frequently see Raubunas and Kaplan and Eddie Dewes?

A. I seen Raubunas and Dewes, I didn't see Kaplan.

Q. Did you ever meet him in the Insurance Exchange Building?

A. Raubunas and Dewes?

Q. Yes.

A. Yes.

Q. When was that?

A. Oh, that was three days following the arrest.

Q. The arrest of who?

A. At the Beisner farm.

Q. Did you see Horton in the Insurance Exchange Building?

A. Yes, sir.

Q. Was there some conversation held there between you in the Insurance Exchange?

A. Yes.

Q. How did you happen to meet Horton there?

A. Well, we met him—we made a meeting with him prior to that arrangement, to have Beisner and Widzes released. We had a meeting with Mr. Horton at his home first, and at his home we decided to meet at the Insurance Exchange Building.

Q. And you met there, did you?

A. Yes.

Q. Now, do you recall a conversation there with Horton?

A. Yes, sir.

Q. Can you tell us what was said?

A. We discussed—

Q. No, not what was discussed, discussion is a conclusion.

A. We asked Mr. Horton if he wanted to have Mr. Beisner and Widzes released from the County Jail on bond.

Q. Who do you mean by “we”?

987 A. Raubunas, Dewes and myself.

Q. You all talked together, did you?

A. Yes.

Q. Go ahead.

A. And Raubunas wanted to know what the total cost would be for our bond, and what we spoke about to him previously, and with regard to an attorney, and Mr. Horton— Mr. Horton said that it would cost \$1200.00.

Q. For an attorney?

A. No, for the bonds and attorney, those were the costs, and we told him we didn't have hardly any money. That we were concerned about Mr. Beisner and Mr. Widzes to arrange for an attorney, and I had also arranged for an attorney, and Mr. Raubunas said that all he could raise was \$300.00. Mr. Dewes said he couldn't raise any money.

Q. And you had an attorney then, did you?

A. Yes, sir, I had an attorney. I told Mr. Horton I had an attorney, and Mr. Widzes had an attorney.

Q. So then the only matter you were concerned with was the bond, is that it?

A. Was the bond and the attorney for Mr. Beisner.

Q. But you had your attorney?

A. I had my attorney, yes.

Q. So they talked to Horton about that, did they?

A. Yes.

Q. So it was decided then that they get an attorney, is that right?

A. Well, it was decided before we met Mr. Horton.

Q. How much was agreed on for the price of the attorney?

A. At first was \$600.00 for an attorney.

Q. Was \$1200.00 mentioned?

A. Yes.

Q. Who mentioned the \$1200.00?

A. Mr. Horton.

988 Q. And what did he say?

A. He said it would be the cost.

Q. Cost of what?

A. Attorney fees and the bonds together.

Q. That would be the cost?

A. Yes, sir.

Q. Now, what did you say at that time?

A. I told him that I had an attorney, and that my bonds were taken care of.

Q. Did you say anything about getting it done cheaper?

A. No, sir.

Q. You didn't say you could get it done cheaper?

A. No, sir.

Q. Did you mention Kretske's name at that time?

A. No, sir.

Q. After your conversation with Horton, did he leave?

A. No, Horton didn't leave.

Q. Well, how long did he stay there?

A. Oh, an hour and a half, or two hours.

Q. What did he do during that hour and a half?

A. Talked to us.

Q. About what?

A. About the financial arrangement.

Q. It was thoroughly discussed then, was it?

A. Yes, sir, it was discussed.

Q. Now, at the conclusion of the discussion what did you do?

A. We went to—

Q. You?

A. I went to Mr. Kretske's office.

Q. How did you happen to go to Kretske's office?

A. At the suggestion of Mr. Raubunas, Dewes and Horton.

Q. What did Horton say.

989 A. He said that we should discuss it with Mr. Kretske.

Q. Well, you had your lawyer, didn't you?

A. Yes, sir.

The Court: He said he had a lawyer three or four times.

Mr. Stewart: Three times.

Mr. Ward: And then you went to Kretske's office?

A. Yes.

Q. And what was said there?

A. Well, we discussed practically the same thing that we discussed with Mr. Horton, and explained to Mr. Kretske that I had my attorney, and Mr. Widzes, and that we were only concerned about having Mr. Beisner represented, and explained our financial difficulties to him, that we could not raise hardly any money. Mr. Raubunas said that he would only put in \$300.00.

Q. What did you say?

A. I didn't say hardly anything about the money.

Q. Did you mention something about putting in some money?

A. No, sir.

Q. And what did Horton say?

A. Horton didn't say very much there. He asked if we wanted to have the men released.

Q. What price did Kretske set?

A. At that time, at first he said \$600.00, and after I explained to him what it was all about, he was satisfied to take the \$300.00.

Q. That was the case, wasn't it?

A. No, sir.

Q. Wasn't \$1200.00 the amount—

A. That was a previous agreement that Mr. Raubunas had made prior to having any knowledge that I had an attorney, and that Mr. Widzes had an attorney. I didn't know that. He made arrangements while I was still in custody.

990 Q. Didn't you say at the Insurance Exchange Building after Horton fixed the price at \$1200.00, you could get it cheaper?

A. No, sir.

Q. And you went over to Kretske's office after that conversation?

A. No, sir.

Q. When you got over there Kretske said \$1200.00?

A. No, sir.

Q. The same price as Horton?

A. No, sir.

Q. And that it was agreed you were each to pay \$300.00?

A. No, sir.

Q. All right. Did you ever go back there again to Kretske's office?

A. Yes, sir.

Q. About that matter?

A. Yes, sir, I went along with Raubunas and Dewes.

Q. When?

A. It was before our case was called before Judge Walker.

Q. Yes. How often did you go back there with them?

A. Well, I went back there the following day, after the first meeting, and about once or twice after that.

Q. Why did you go back to Kretske's office?

A. At the request of Mr. Raubunas and Dewes.

Q. How many times did you go back to Kretske's office after the hearing before the Commissioner?

A. About two or three times.

Q. And was the last time you visited Kretske's office was that before the hearing before the Commissioner, or was the hearing on at that time?

A. It was before the hearing.

Q. Now, who was the agent of the Alcohol Tax Unit who was in your case there, the Dukatt case?

991 A. I believe it was Mr. Connors.

Q. Was Mr. Connors there in court when the case was called?

A. I believe he was, I didn't know him at that time.

Cross-Examination by Mr. Stewart.

I was a partner in the still at the Greenhouse and also at the Beisner farm. I was also in a still with Mr. Brown at Union City, Ill. That is all that I was in. I was arrested while they were conducting a raid at the Beisner still. Widzes and I drove up there, and the agents questioned us. I told them I was just going to the farm to buy

some eggs. That was a lie. I was just saying that to protect myself, and to give some explanation for driving up there, and I denied I had anything to do with the still. I continued to deny that until I entered a plea of guilty about a year later. All during the year, while the case was being investigated, I took the position that I was just an innocent man, trying to buy some eggs, and I refused to give any information. My nephew Dvorak was cooperating with the agents and the officials, and he went before the Grand Jury, and he was giving information such as he might have had himself. When I was finally brought to court for prosecution, I pled guilty, and the Judge had an investigation made in the usual course. I was granted probation, and then later on I was brought in court and charged with complicity in the Beisner still before Judge Wilkerson.

Mr. Ward was the prosecutor in the Beisner farm case, and knowing that I had been on probation in a former case, I received as my sentence an hour in the custody of the marshal. I served that.

Q. Now, were you out in the Forest Preserves with Dewes near the greenhouse when you saw Raubunas's car go by?

A. I never seen his car go by.

Q. Did Dewes say he saw it go by?

A. No.

Q. Did you have a talk with Raubunas at any time where you stated you saw him out around the greenhouse?

992 A. Some time later.

Q. You accused Raubunas of spying on you, didn't you?

A. I did not.

Q. Did you talk to him along that line at all?

A. No.

Q. Were you in the presence of Raubunas and Dewes when such an accusation was made?

A. No.

Q. So that didn't happen, as far as you are concerned?

A. No.

Q. Did you put any money in that greenhouse still yourself?

A. Yes, sir.

Q. About how much?

A. About \$300.00.

Q. And were you present when Raubunas put his money in?

A. Yes.

Q. Who else put money in?

A. I believe Mr. Kaplan put a few dollars in.

Q. Do you remember the amount?

A. \$500.00.

Q. Now, have you named all the people and what amount put in?

A. That is about all.

Q. You say that is about all. That leaves a kind of loop-hole there.

A. From what I remember of.

Q. And was anything said about buying protection?

A. No, sir.

Q. That was not discussed, was it?

A. No, sir.

The Witness: When we got the still operating we manufactured moonshine, and sold it. There were profits. They were not divided among the partners. We put it right back in the business, to buy more material, and so forth. When we got the Beisner farm still going, we 993 manufactured some moonshine, and sold it. We did not divide up any money, we put it back in the business for material. When the agents arrested me at the Beisner farm, they didn't ask questions about the greenhouse, they didn't seem to know about that.

When we came over to court at the time the Beisner case was presented in court, Mr. Marowitz was my lawyer, and Mr. Kretske was the lawyer for Mr. Beisner.

At the time I received an hour in the custody of the marshal, Mr. Ward was representing the government, before Judge Wilkerson. I believe Mr. Ward showed the pictures to the Judge. Mr. Ward made a speech there for me after the Senator, my lawyer, had made a speech for me, Mr. Ward recommended to the Judge that I get an hour—he didn't tell me why he did that. I never discussed with my nephew what arrangement he was making in return for his testimony before the Grand Jury. He did not tell me that he insisted on some protection for me. I never talked to him about it. When he was before the Grand Jury, I was out on bond.

Q. Now, when you were over in the Insurance Exchange Building there discussing and getting people out on bond,

you folks were anxious to get the farmer out so he wouldn't tell what he knew about you, isn't that right?

A. Not necessarily about me, no, about all of us.

Q. About all of you, all of the partners in the still. You didn't want the farmer to go and cooperate with the Government against you, isn't that right?

A. That is right.

Q. And in order to keep him from doing that, you wanted to show the farmer you were helping him by getting him out on bond, that was your motive?

A. That is right.

Q. And you were not so very much interested in Widzes because he was a partner, isn't that true?

A. That is right.

994 Q. And you were not so very much interested in Neiss, because he was a mechanic, and he belonged to a different crowd, that is right too, isn't it?

A. Yes, sir, that is right.

Q. So your main interest was in the farmer?

A. That is right.

Q. And you were willing to help the farmer in so far as it would cost you money to pay for a bond?

A. That is right.

Q. And you were willing to help the farmer in paying for a lawyer, and arranging for a lawyer, isn't that true?

A. That is right.

Q. And that was the object of your discussion?

A. That is right.

Redirect Examination by Mr. Ward.

Something was said about the tendency of the farmer to talk a little bit if they didn't take care of him. That was discussed with Mr. Dewes and Raubunas and myself every time we met. It was discussed in Kretske's office too.

You used my nephew Dvorak as a witness for the Government. I was present when he testified. He worked out at the Beisner farm.

My activities in the Dukett case preceded my activity in the Beisner case. When I was placed on probation before Judge Holly there was only one indictment pending against me at that time.

(Whereupon EXHIBIT NO. 156, being the file of the District Attorney's office in indictment #31201, Emil Beisner, Edward Dewes and Victor Raubunas, which indict-

ment was returned on November 1, 1938, was received in evidence. Also EXHIBIT NO. 157, being the file of the District Attorney's office in indictment #31193, Harry Dukett, alias Harry Brown, Harry Hershel, Edward Farber and Jack Weber, which indictment was returned on November 1, 1938, was received in evidence.)

995 When the probation officer was making his investigation, I believe something was said about the Beisner farm.

(Whereupon photostats of still, exhibits 138 to 155 both inclusive were shown to the jury.)

(Witness excused.)

WILLIAM I. CONNORS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is William I. Connors, I am a special investigator, Alcohol Tax Unit. I made the investigation in the Union Illinois still case, which resulted in the indictment of Harry Dukett, Jack Weber and Edward Farber. It was a 350 gallon moonshine still and a 500 gallon second run still. I recall being present in court on that case. The Government was represented by the defendant Glasser. I was in court frequently on that case, from November 1938 to May 1939. Before the indictment was returned, I saw Mr. Glasser from time to time. The case during that time was not under investigation.

Q. What would be your reasons for going over to see Mr. Glasser?

Mr. Stewart: I object to that. He can tell what was said, but not what his reasons were.

The Court: Objection sustained.

Mr. Ward: Q. What were the reasons for going there, if material—

The Court: Objection sustained.

Mr. Ward: His reasons for going over to Mr. Glasser, in his official capacity, of course, that is what I am driving at.

Q. Why did you go over to see Mr. Glasser?

Mr. Stewart: I object.

The Court: Q. Why did you go?

Q. To inquire about the progress of the case.

996 Mr. Ward: Q. Did you hold conversations with him from time to time?

A. I did.

The Witness: I don't remember exactly what was said, it was over a period of time. I have been with the Alcohol Tax Unit in Chicago since November 1927. I have frequently visited Mr. Glasser's office. I have seen Yarrio, Exhibit 118, in Mr. Glasser's office on two occasions. It was during the time that I was inquiring about this case, I don't know exactly when. I know that is the same Yarrio or Sheenie Albert who was the defendant in the United States versus Workman. I attended court in the Weber-Dukett-Farber case before Judge Holly about fifteen or twenty times. I subpoenaed the witnesses. And those who were present I remained with during the time that they were there. I attended court there on that case with Mr. Glasser and I was ready for the Government. I know the defendant Roth, he was there on most occasions. As I recall it, he represented Harry Dukett, and that is as I recall it. I was present on the day the pleas of guilty were entered for Farber and Weber before Judge Holly. At that time Mr. Farber's attorney passed over to the court some documents. I didn't see what they were, and nothing was said. No evidence was presented as to Farber to the court, and he was granted probation. To the best of my recollection there was no preliminary investigation made as to Farber. In Weber's case Mr. Glasser asked the court to refer him to the probation office for investigation, so that at the date the case was to be heard, that the Judge would have the investigation. I know that at that time Weber was on probation for assaulting a Government officer. Nothing was said about the facts in the case to Judge Holly. Harry Dukett's case came up in May 1939. You represented the Government, Mr. Ward, the case was transferred from Judge Holly's court to Judge Woodward. Mr. Roth was there at the time of the transfer. He changed
997 the plea to guilty, and the Judge transferred the case regardless. Later on the case appeared before Judge Igoe, where Dukett was sentenced to the penitentiary. At the time when Farber and Weber's case was discussed before Judge Holly Mr. Glasser did not show the pictures to the Judge.

(Witness excused.)

HARRY DUKATT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Harry Dukatt, at the present time I am an inmate of the Federal Penitentiary at Sanstone, Minnesota. I was convicted for an alcohol tax violation here in May 1939. I was indicted in a case with Farber and Weber November 1, 1938. The case was before Judge Holly and I entered a plea of not guilty, my lawyer was the defendant Roth, I don't remember how many times I was in Judge Holly's courtroom, I was there several times. I remember the morning that the case was going up before Judge Woodward, my lawyer said something about your wanting to take it away from Judge Holly to Judge Woodward. I had another case pending before Judge Woodward at that time. I remember the case I was convicted on before Judge Igoe. The one I was before Judge Igoe on, was a different case than the one I was on before Judge Holly. I pled guilty to two convictions. I know the defendant Glasser since the last part of 1937. Mr. Roth introduced me to him in the Federal Building once. At that time I was going under the name of Harry Brown. That was before my hearing before the Commissioner, that I met Glasser. Nothing was said, Roth just introduced me to him. Before that time I had never met Mr. Glasser. I know the defendant Kretske since the last part of 1937. I knew him before that to see him, but I never knew him to talk to.

I knew him to see him probably several years.

998 I was arrested on May 13, 1938 in connection with a still found at 809 East 40th Street, Mr. Roth was my lawyer in that case, I was released on bond, my bondsman was the defendant Horton. I did not pay for the bond, some people I associated with did. I employed Roth in my case right after I was out on bond. I talked to Roth about the case, he didn't quite seem to understand what I told him about the case. I was arrested not in any still. I was arrested on the outside. He thought I had a good chance before the Commissioner, he didn't see anything wrong. He didn't say anything about having it thrown out, but he said he didn't think they had anything on me, being picked up on the street. He thought my chances

were very good. When I got to the Commissioner's hearing, Mr. Glasser was there. He didn't speak to me, he just looked at me, that is all. I wouldn't say he said hello. I don't remember what was said before the Commissioner, I was very far away from the end of the table, they were closer. I don't remember exactly every word that was said there, but I do remember they called up the Federal men there, they said something about not having enough evidence, they said something concerning evidence, and the Commissioner evidently dismissed me. There were two Federal men there by the name of McElroy and Rossner, but I am not positive it was them, but I think it was McElroy and Rossner. To be honest with you, I didn't hear what was said. I was so happy to be discharged and get out of there, I didn't hear a lot of words. Now, whether he discharged me or no-billed me I don't recall.

Q. You say you suddenly became happy?

A. That is right.

Q. What did you hear that made you become suddenly happy?

A. Well, because I was discharged.

Q. Who did you hear say that?

A. The Commissioner.

The Witness: There were other men connected with that still. They were all convicted, they all pled guilty, there was six of us. I did not have any talk with Mr. Roth about his representing any other person connected with that still.

Tony Horton took me out on bond only once. After 999 I was discharged before the Commissioner I was indicted on that same case. Mr. Roth represented me in that case. After I was indicted, Mr. Roth wanted to find out about the case. He came in the building with me, but I don't remember what floor I went to.

Q. You looked at some file?

A. Well, I didn't look at any file, he was just showing something about an indictment, what I was indicted for and I happened to see something about the Government men following me.

Q. What?

A. I happened to see something when the Government men were following me.

Q. You mean you read a report?

A. Well, I didn't have any report. He was shown some papers about my indictment, and I happened to glance over it and seen a few words concerning me.

Q. You saw something about the Government following you?

A. Yes, sir.

Q. You don't know whether that was an indictment or not, do you?

A. I couldn't tell you that.

Q. Did you see Mr. Roth making a lot of notes at that time?

A. I don't know how many notes he made, I wouldn't say how many notes he made.

Q. That was just to refresh your recollection at the time, does that refresh your recollection?

A. He just wrote something down.

Q. Well, you knew at that time it was an officer's report, didn't you?

A. Well, I really don't know what it really was. I wanted to know what I was indicted for.

Q. Well, would this refresh your recollection? (Handing document to witness.) In other words, I have the report, I was reading here, the officer's report of the investigation, the report, "As much as I saw seemed to be 1000 correct in stating my movements". Does that refresh your recollection?

A. Well, there were a few times I happened to see where the Government followed me, that happened to refresh my memory, seeing it was me, that is about all I remembered.

Q. Now, on the second case that you had, did you have any discussion with Mr. Roth about probation?

A. Well, I had him handle both cases for me.

Q. The case you had before Judge Holly?

A. Yes, sir.

Q. Mr. Roth discussed probation with you?

A. That is the only thing—

Q. Keep your voice up.

A. The only thing Mr. Roth discussed with me was he thought I had a good chance to get probation, because I was never indicted before in my life at any time with any crime, but he wouldn't guarantee me nothing.

Mr. Ward: Will you mark this Exhibit 158?

(Document so marked.)

Mr. Ward: Q. Will you look at this, as being part of a report in your case, does that look like the report you were reading from with Mr. Roth?

A. Well, to be honest with you, I don't just remember,

I don't know if it was this size of paper or larger, I don't remember, because I really didn't pay much attention at that time.

The Witness: I have been to the 1933 Grill on Dearborn Street, I had lunch with Kretske there, several times. On one occasion I had lunch with Kretske, and he told me he had to go and meet Mr. Glasser and I waited for him. When he came back he didn't say nothing to me. He never discussed it, I never asked him nothing. He said he had an appointment with Mr. Glasser. When he came back he said he had been to see Mr. Glasser, he came back so fast I asked him if he saw him, he said yes, and that is all that took place. My case was pending at 1001 that time. I talked to Mr. Kretske about it several times.

Q. What did he say to you?

A. Well, on the several times I talked to him I asked him if there was anything he could do for me with Mr. Glasser, and he told me he couldn't do nothing.

Q. Didn't he say—

Mr. Callaghan: I object to this, this question, obviously it is going to be leading. Didn't he say? Let the witness testify.

The Court: That is to refresh his memory.

Mr. Ward: Yes, that is to refresh your recollection. Did I say Kretske told you you didn't have anything to worry about?

A. Mr. Kretske told me that I didn't have nothing to worry about, that I had a good chance to get probation, that I had no record of no kind.

Q. All right. I see. Now, when Mr. Kretske left you that day, and said he was going to see Glasser, did you say you would go with him?

A. I asked him if he wanted me. He told me no, it was something confidential, he wanted to see him, and he would be right back.

Q. And after Kretske returned, you had lunch together, didn't you?

A. Yes, sir.

Cross-Examination by Mr. Stewart.

I was happy to get out of the Commissioner's office, and I will be happy to get off this chair, I suppose.

(Witness excused.)

BESS JEFFERY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Miss Bess Jeffery, I am employed in the United States Attorney's office, and have been for at least ten years. I take care of vouchers, and I take care of 1002 the Commissioner's docket, and make the reports, at the end of the month, of the Commissioner's cases. When people are held to the District Court to await the action of the Grand Jury I enter that finding in the Commissioner's docket of our office. When the indictment is written it comes to me and then I take the Commissioner's report, if there is one, and then send it and attach it and if I am not sure if the Commissioner's report and the indictment are the exact same, I go to the Attorney and ask him. Each assistant draws his own indictment. I talked to Mr. Glasser about the Peter Hodorowicz and Walter Hort case about the 6th of June, when the indictment came through. I was not absolutely sure my Commissioner's report and the indictment were the same, and I took the Commissioner's report and indictment to him, and asked him about it, and he said it was the same case, and I marked it on the Commissioner's report. I had the indictment in which Peter Hodorowicz, Clem Dowiat, Frank Hodorowicz and Mike Hodorowicz were mentioned, I wanted to find out whether the Pete Hodorowicz case which was held over by the United States Commissioner Walker, was the same case as covered by the allegations of the indictment. So far as the records of our office is concerned, that would ~~close~~ close the case out on our books. The Walter Hort case is still pending. I did not have any talk with Mr. Glasser about that.

(Whereupon EXHIBIT #159 which is the Commissioner's report #19076 was received in evidence.)

(Witness excused.)

GORDON MORGAN, recalled as a witness on behalf of the Government, having been previously sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

Mr. Ward: It is stipulated that the Grand Jury report for June, 1937 indicates that Mr. Glasser appeared before the Grand Jury, and that special agent Donoghue was a witness. That that Jury had before it for consideration certain facts regarding a violation of section 1181, 1003 title 26 of the United States Code, and Section 201 of the revenue laws of 1934. That the subject under investigation was Peter Hodorowicz and Walter Hort. That the day that was presented was June 24, 1937. That the Grand Jury voted a true bill on that day. At the request of Daniel Glasser, Assistant United States Attorney, withdrawn and passed to the next Grand Jury, July 1, 1937.

It is further stipulated that Assistant United States Attorney Glasser never re-presented the Peter Hodorowicz and Walter Hort case to any Grand Jury subsequent to July 1, 1937.

It is further stipulated that on October 6, 1937, Assistant United States Attorney Glasser appeared before the Grand Jury, and they had before it the subject Clem Dowiat, the case of Clem Dowiat, at which time there was a no-bill returned by the Grand Jury.

The Witness: Mr. Glasser ceased to handle the alcohol tax call March 20, 1939.

(Witness excused.)

CHARLES O. KRAL, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is Charles O. Kral, I am an investigator, Alcohol Tax Unit, I served a search warrant on the premises in the 3600 block West 111th Street, on December 31, 1937, investigators Newall and Gilbert were with me. We seized 706 gallons of untaxpaid alcohol there. We arrested

John J. and James B. Jankowski, I did not investigate those premises prior to the seizure. This was known as a place where alcohol was concealed. The alcohol there came from a recooking still at 6949 Stony Island Avenue.

(Witness excused.)

1004 THOMAS BAILEY, recalled as a witness on behalf of the Government, having been previously sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

I am the same Thomas Bailey that testified heretofore. I have been connected with the Alcohol Tax Unit since 1926. During the fall of the year 1937 I was assigned to an investigation of the Hodorowicz Brothers. That is Frank, Mike, Pete and Anthony. On or about December 1, 1937, I started in the serving of a search warrant on the premises at Stony Island Avenue and arrested the Tony Hodorowicz who testified in this case and had some difficulty with him. He said he wasn't going to jail, and I told him he was, he broke loose and ran, and I caught him and brought him back. He broke loose and I caught him four or five times so I told him I would have to subdue him unless he submitted to arrest, he said he was not going to jail, so I subdued him. He went to jail but before that he went to the hospital. I appeared before the United States Commissioner in that case, the defendant Roth represented the defendants, and Glasser the Government. I had previously told Mr. Glasser that we would like a continuance of the case, as we had some under cover men working in town, and I didn't want their identity to be disclosed. Mr. Glasser then told the Commissioner that we would like a continuance, we then went into the Commissioner's chambers with the Commissioner, Mr. Roth, Mr. Glasser and myself. After the continuance was granted, we returned to Mr. Glasser's office.

Q. Will you tell the Court and Jury just what was said by you and what was said by him?

A. Mr. Newall was again present, Investigator Newell, and I told Mr. Glasser that I had an excellent case on the Stony Island still, that that we had connected the Hodorowicz brothers with that still. Mr. Glasser said, "That

sounds like it might be a big case." He said, "I would like to have a case that would take about two weeks 1005 to try." And I said, "I have just got the case for you, Mr. Glasser." And then I explained the conspiracy case that I had involving the Hodorowicz Brothers and a number of other defendants. I told him I had connected the Hodorowicz brothers with not only the Stony Island Still, but with a still at East Chicago where Victor Joppek had been killed, when the still exploded, or died in the still room when the still exploded, and some other stills in Chicago; a large drop on 111th Street where seven hundred and some gallons of alcohol had been seized, and that in addition to that, through under-cover agents I had made two purchases of alcohol from the Hodorowicz brothers involving Frank Hodorowicz, Mike Hodorowicz and Pete Hodorowicz. Mr. Glasser said, "Well, I am glad you have a case against the Hodorowicz brothers, as there is hardly a week passes that Mr. Igoe does not ask me if we have a case against the Hodorowicz Brothers." At that time I said I would like to talk to Mr. Igoe about the case. Mr. Igoe at that time was the United States Attorney. Mr. Glasser said, "Well, I suppose I can arrange it." And then went to the telephone and called up Mr. Igoe's office, and turned to me and said, "All right, come on in." Mr. Glasser, Mr. Newell and myself went to the office of United States Attorney Igoe. Mr. Glasser introduced Newell and myself to Mr. Igoe, and then told Mr. Igoe that I had involved the Hodorowicz brothers in a number of violations, and had quite a case against them. Mr. Igoe said he was glad that our Department had someone who could catch those fellows. That he had been after them for a long time. Mr. Igoe then turned to Mr. Glasser, and he said, "I am very much interested in this case, and when you have it ready for the Grand Jury I want you to notify me." Mr. Glasser said that he would. We then left Mr. Igoe's office and returned to Glasser's office, and had a further discussion about the Hodorowicz case, and Mr. Glasser said, "If you have your report ready, I will present this case to the Grand Jury by about February 18th."

The Witness: I had further discussions with Mr. Glasser on many occasions during the months of February and March, 1938. I talked to Mr. Glasser on March 21, 1938 about the seizure of the Dowiat car. There was a

libel pending against the car at that time. Mr. 1006 Glasser on that occasion said to me, "You have a good case against those Hodorowicz brothers, they will get five years." I said, "I suppose they deserve it but I would settle for three if we could get it for them." On March 31, 1938 Mr. Glasser told me an attorney had been in touch with him for the Hodorowicz brothers, and he told me, "Frank Hodorowicz wants to enter a plea of guilty if he can take a light sentence," but I told him I didn't think we should accept any such plea. I told him I was preparing a conspiracy case report and that it would take several weeks to complete it. On the 21st of April I brought that report to Mr. Glasser's office. Exhibit 160 is that report. In addition the Hodorowiczs, other individuals named as prospective defendants were, Swanson and Del Rocco, Dowiat, Walter Hort, Victor Joppek, Steve Skupka, John Kazniereczak, John Cincio, John Hongera, James A. Jankowski, John Jankowski and Clarence H. Young. I delivered that report to Mr. Glasser in person and saw it on his desk, and discussed it with him on many occasions. When I delivered the report to Mr. Glasser, he said he would present it the following month to the Grand Jury. On May 9, 1938, I had a conference with Mr. Glasser in his office, and he said he would present the two purchases of alcohol made from the Hodorowicz brothers to the Grand Jury later that month, these were two substantive violations that were included in the conspiracy report, but didn't include the entire report. On that occasion I asked Mr. Glasser to spend about three evenings with me going over the report so that he might understand it. He said he would that, but he never did. On May 31st I had another conference with Mr. Glasser to present the Hodorowicz case, and he said he would present the buy-cases to the Grand Jury, and would later present the conspiracy case. Mr. Smallwood was along, another investigator. I arranged for the witnesses who appeared before the Grand Jury during the month of May or June, 1938, I was present when they went before the Grand Jury but I didn't enter the Grand Jury room. I didn't testify. On June 3, 1938 the Grand Jury returned a true bill against Frank, Mike and Pete Hodorowicz and Clem Dowiat. On June 14, 1938 I had a conversation with Mike Hodorowicz and as a result of that I saw Clem Dowiat at the Hodorowicz store. On the 27th of 1007 June, Mr. Glasser told me he would that he would present the conspiracy case the following month, that

was July. Exhibit #161 is the indictment of Frank Hodorowicz, Mike Hodorowicz, Pete Hodorowicz and Clem Dowiat, that is case #31013. Exhibit #162 is indictment #31014, the defendants are Frank Hodorowicz, Pete Hodorowicz and Clem Dowiat. They were the two cases that I mentioned when I referred to "buy" cases. They charged them in one case with the sale of twenty-five gallons of alcohol on the 19th of December, 1937 and the other with thirty-five gallons of alcohol, on the 21st of December, 1937. Subsequent to the return of the indictments I went to Mr. Glasser's office, and Mr. Ritter was there at that time. Mr. Glasser said he had the indictments all mixed up in the Hodorowicz case. That where he charged the purchase of 7 five-gallon cans, he should have charged the purchase of 5 five-gallon cans, and where he charged the purchase of 5 five-gallon cans, he should have charged the purchase of 7 five-gallon cans. I said, "We are going to have a hell of a time in court with these indictments." That was about January 28, 1939. Mr. Glasser never presented the conspiracy case. On the 12th of July, 1938, I attended the arraignment of Frank, Peter and Mike Hodorowicz in Judge Woodward's courtroom, they were there and Mr. Roth, Mr. Glasser and myself, Clem Dowiat was not there.

Q. And after you left the court room did you have a conversation with anyone?

A. Before I came into the court room, I had been up in Mr. Glasser's office, and I saw Frank Hodorowicz in his office. While I was standing there Mr. Frank Hodorowicz said to Mr. Glasser, "How did you like that whiskey I sent you?" And Mr. Glasser said, "Well, that is all gone long ago, I gave most of it away." A few minutes later I walked out of Mr. Glasser's office and came down to the corridor outside of the court room. I saw the defendants, the Hodorowicz brothers in the corridor, and Mr. Glasser walked into the court room, and I saw Mr. Roth in the corridor outside of the court room.

Q. Did you have any conversation with Mr. Roth?

A. I did.

1008 Q. What did you say to him, and what did he say to you?

A. I said to Mr. Roth, "I see the three Hodorowicz brothers here, but I don't see Clem Dowiat. Where is he?" Mr. Roth said, "Well, he is only a boy, he works on a farm, and he says he does not even know he has

been indicted." And he said, "I am going in and ask for a continuance of the case until we can locate Dowiat." I said, "Mr. Roth, that is not so. Dowiat works for Frank Hodorowicz every day, that within the last few days I have seen Dowiat at Frank Hodorowicz's store, and if you ask for a continuance on this ground, I am going to tell the Judge the truth." Mr. Roth then left me and walked in the court room. And a few minutes later I saw him talking to Mr. Glasser, and I didn't overhear the conversation. And a short time later the case was called, and Mr. Roth entered a plea of Not Guilty for Frank Hodorowicz, Mike Hodorowicz and Pete Hodorowicz, and a day was set for trial.

Q. Now, did you leave the court room at that time?

A. Yes, I did.

Q. Did you see anybody?

A. I left the court room and got to the circle in the corridor, and saw Mike Hodorowicz, Pete Hodorowicz, Frank Hodorowicz, and the wife of Frank Hodorowicz standing together talking to Mr. Glasser. As I came past, Mr. Glasser talked out, commenting in a loud tone of voice, and said, "Frank if I don't get you five years, Bailey here is going to get my job." I smiled and made no comment, and went on my way.

The Witness: On September 28th, hearing in court with regard to the Dowiat automobile case came up and was continued. I talked to Mr. Glasser in his office at that time and he told me he could present the conspiracy case the following month. He told me at that time that the Hodorowicz case was set for October 3rd, and that the Hodorowicz brothers had hired Mr. Hess as their attorney. Mr. Roth was not in the case again after the arraignment. Mr. Hess appeared. I asked Mr. Glasser at that time to present the Hodorowicz case, as I had reliable information that the brothers were still violating the same as they had ever done. And that he ought 1009 to get them away. The case was continued from October 18th to November 14th and from then to December 7th. Mr. Glasser asked for all the continuances. The other lawyers did not. On January 31st, 1939 the case was continued to February 1st, when the trial started before Judge Woodward. Clem Dowiat was there, and Mr. Hess represented all the defendants. There was a Jury trial. At the close of the Government's evidence,

there was a directed verdict in the first case in favor of Frank Hodorowicz and Peter Hodorowicz. The case continued against Mike Hodorowicz and Clem Dowiat and they were found guilty. In the second case Peter Hodorowicz, Frank Hodorowicz and Clem Dowiat were tried and they were found guilty by a Jury.

Q. And what sentence did Frank Hodorowicz receive?

Mr. Stewart: That has all been gone over. I object to it in the interest of saving time.

The Court: It has been proven two or three times. It might refresh our recollection.

Mr. McGreal: It might refresh our recollection?

The Court: Yes.

A. Frank Hodorowicz received a year and a day. Mike and Pete Hodorowicz and Clem Dowiat received nine months. I was in court at the time the Judge sentenced these men. Nothing was said by Mr. Glasser about my conspiracy report which is exhibit 160. Mr. Glasser did not give the court any history of the defendants. As I recall that occasion, Mr. Hess asked for probation for the defendants, and put up quite an argument, asking for probation, and the Judge said, "I have listened to this case very attentively, and this is not a case for probation." Mr. Glasser had nothing to say. As we left the court-room Mr. Glasser or Mr. Hess, notified the court that he was going to appeal the case, and the defendants, were admitted to bond, or permitted to go on their own bond. Anyway, they left the court-room, and as I got out of the court-room, I had a conversation with Frank Hodorowicz. As a result of that conversation I made an appointment for Frank Hodorowicz to meet me at the 1010 office of the Alcohol Tax Unit, two days later, which was March 22nd, 1939.

(Witness temporarily excused.)

WILLIAM J. BRANTON, a witness produced on behalf of the Government, having been previously sworn, resumed the stand:

Mr. Stewart: Your Honor, I asked this man to come back for cross-examination, but I don't want to cross-examine him. I don't want anything to do with him.

(Witness excused.)

THOMAS BAILEY, having been previously sworn, resumed the stand and testified as follows:

Direct Examination (Resumed) by Mr. McGreal.

At the time I presented the conspiracy report to Mr. Glasser, I also presented exhibit 163 which are the exhibits in the case, photographs and so forth. I turned them over to Miss McGarry April 21, 1938. On March 22, 1939 Frank Hodorowicz appeared at our office and conferred with Mr. Herrick and myself. As a result of that Mr. Herrick had a conference with the United States Attorney, and I was appointed to work out of the United States Attorney's office on the case that is being tried here now. I was instructed to work with the Federal Bureau of Investigation in this investigation.

(Whereupon EXHIBITS NOS. 160 and 163 were received in evidence and read to the Jury.)

(Witness excused.)

Mr. Ward: It is stipulated that on October 6, 1937 a man by the name of Egiste Oleski was before the Grand Jury charged with violation of the alcohol tax law; that Roy Kinlock the agent, testified, and Glasser represented the Government. The Grand Jury returned a no-bill;

That Charles Banks, D. H. Reid, John Jursech and William Gehrke were before that Grand Jury charged 1011 with violation of the alcohol tax law; the Government being represented by Glasser; that a man by the name of Harry Samaski and T. T. Cookley appeared as witnesses and there was a true bill as to Joe Serevino and John Horn, subject to the consideration for proper identification, and a no-bill as to William Gehrke, John Severino and D. H. Reid; that on October 27, 1937 the case was passed to the next Grand Jury at the request of Mr. Glasser.

(Whereupon EXHIBITS numbered respectively 164, 164-A, 165, 166, 167, 168, 169, 170, 170-A, 171, and 172 were received in evidence.)

(Whereupon the statements of the witnesses Raubunas and Dewes made on October 20, 1939 were offered in evidence, to which offer the defendants object and which said objection is sustained.)

(Whereupon on objection by the defendants to the re-

ceipt of exhibit 158 in evidence the prosecution withdrew their offer of said exhibit.)

(Whereupon the prosecution made a bulk offer of all exhibits to which the defendants made a bulk objection.)

E. H. STEPHENSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McGreal.

My name is E. H. Stephenson, I am an agent of the Alcohol Tax Unit. On April 29, 1937 I went with investigators Newell, Ward and Rossner to 10505 S. Wallace, with a search warrant. We found 150 gallons of alcohol and four gallons of uncolored spirits. We arrested William Wroblewski. I appeared before the United States Commissioner in that case and later learned that there was an indictment returned.

(Witness excused.)

1012 VICTOR RAUBUNAS, recalled as a witness on behalf of the Government, having been previously

sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

Mr. Ward: Let the record show Mr. Raubunas is recalled. You sent word to me that you wanted to be called back on the witness stand, is that right?

A. That is right, I want to explain.

Q. What is it you want to explain?

A. I want to explain that one that there that went so fast, I never keep in mind. I was asked a question about Bishop Shiels, about fixing case. I want to say, Judge, let me explain, but I thought maybe I not got rights on it.

The Court: Go ahead.

A. Louis Kaplan come over and to Bob Graven from the gas station, on June 18, 1939, to my home at 8:30 in the morning. I don't know the date, but it was Monday. He come to my home and I was home. He said, "Now, we are in trouble." I say, "Yes, I have that subpoena in

the Spring Grove in my pocket." Louis Kaplan say, "We are in trouble, we are in trouble." I said, "Yes, I got subpoena, got big trouble now." He says, "We got to look for man to fix case. My friend Glasser is resign from office and is going to open his own office", he tell me, some place on La Salle street. He says, "what has Bishop Shiels got to with it?"

The Court: Who said that?

A. He said, "Bishop Shiels is put United States Attorney Campbell in office."

Mr. Ward: Who said that?

A. Louie Kaplan. He say, "You got to look for man and see Campbell. Maybe you churchman, maybe you Catholic." I said, "I don't know Bishop Shiels has nothing to do with this." He talk to me, and Bob Graven, they say, I should go and talk to him. I say, "I don't know what to say to Bishop Shiels." Well, I change 1013 my mind and say, "you drive my car to my church, Nativity, 68th and Washington." I find my priest and show him my indictment papers subpoena to the court. I say, "Father can I go to Bishop Shiels and talk?" He look on that subpoena and say, "I don't know, I don't think so; Bishop Shiels can't talk on that." "Of course," he say to me, "if you want to go, Bishop Shiels won't hear you." I say, "all right," and I tell Louis Kaplan to drive me. Father, my priest, gave me name and say to go in and talk. He say, "I don't think he can do anything." I told the address 3500 North Paulina, the Bishop Shiels' Parish, and Louis Kaplan drive me for Mass. I go to Bishop Shiels' church, go to the hallway. An office girl was sitting there and she say to me, "What do you want?" "I want to see Bishop Shiels," and I show my Father's name. She says, "Bishop Shiels just left, but if you got your Priest's name, I will give you the address and maybe you find him there, 31 East Congress Street. That is the CYO." Louis drive me there and I wait for Bishop Shiels. I asked a fellow there and he say, "Bishop Shiels is busy, but sit down and wait." Then Bishop Shiels call me, I go in there, and like all Catholics, kiss the ring. He says to me, "Sit down, what can I do for you?" I tell him I got trouble and pull my subpoena out and show him. He look at it and say, "Very, very sorry, I not interfere with such kind of things. I can't help." I tell him thanks and kiss the ring again and walk out to Louis

Kaplan and tell him that. I walk out to Louis Kaplan in the car and sit down in the back and Bob says, "You must get big man to talk to Bishop Shiels. You too small man." He says, "I got big man." I say, "Well, if you have, all right." Bob say we go some piace on 68th and South Ashland, but I will not go no place. I say, "Take me home." I say to Bob, "If you tell me like this, I believe it, but take me home", and they take me home.

Mr. Ward: Q. That is what you wanted to come here and tell?

A. Yes, I can't sleep for three days.

(Witness excused.)

Mr. Ward: The Government rests.

1015 Thereupon, on motion of the defendants by their respective counsels, the Government elected to stand on count two of the indictment and count one was accordingly dismissed by the order of court.

Thereupon, the defendants by their counsel, entered their respective motions for a directed verdict of not guilty at the close of the Government's case, which motions for a directed verdict were, after arguments by counsel, overruled and denied, to which denial of the court the defendants, by their counsel, duly excepted. The motion of the defendant Alfred E. Roth for a directed verdict of not guilty, being in words and figures as follows:

1016 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

MOTION OF ALFRED E. ROTH, ONE OF THE DEFENDANTS HEREIN, FOR A DIRECTED VERDICT OF NOT GUILTY ON BOTH COUNTS OF THE INDICTMENT HEREIN AT THE CLOSE OF THE GOVERNMENT'S CASE.

Now comes Alfred E. Roth, one of the defendants herein at the close of the Government's case and moves the Court to direct a verdict of not guilty on both counts of the indictment herein on the following grounds:

1. The indictment charges a conspiracy to solicit certain persons to make promises—there is no proof of any solicitation by or on behalf of this defendant or payment

of any money to or by or on behalf of this defendant for any unlawful purposes.

2. The Bill of Particulars does not allege the solicitation of or payment to or by this defendant of any money for any purpose and there is no proof of any solicitation of or payment to or by this defendant of any money for any unlawful purpose.

3. The evidence is insufficient in law to sustain a conviction.

4. There is no competent evidence in the record to justify submitting the case to the Jury.

5. The evidence fails to establish an agreement with this defendant and any other defendant or co-conspirator to commit the offenses charged.

6. There is no evidence of any act of any co-defendant or co-conspirator nor any independent evidence showing this defendant to be a party to the alleged conspiracy.

1017 7. The existence of the alleged conspiracy has not been established.

8. The evidence is consistent with innocence.

Alfred E. Roth.

Thereupon the defendants by their respective counsels moved to strike and exclude the testimony of the Government's witnesses, Victor J. Dowd and Alexander Campbell, which motions were, by the court, overruled and denied, to which denial the defendants by their counsels duly excepted.

And thereupon the defendants to maintain the issues on their behalf, introduced the following evidence, to-wit:

1018 JOHN P. BARNES, called as a witness on behalf of the Defendant Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is John P. Barnes. I hold an official position here, that of U. S. District Judge Northern District of Illinois. I have held that position nearly nine years, and during the time I have been holding court here, Mr. Glasser appeared before me as a representative of the Government.

Q. I wish to direct your attention particularly to a

case which has been testified to here which involved a libel wherein a car was petitioned for by a Mrs. Battelli and Mr. Roth, one of the Defendants here, appeared before you as attorney for the Petitioner, and Mr. Glasser appeared as attorney for the Government. Do you remember that case, Judge?

A. I think I do. I would like to see the Agent's statement, however.

Mr. Stewart: May we have it?

The Witness: Read it to me. I didn't see it, somebody read it to me.

Mr. Stewart: I will read it. The basis of forfeiture. Have you a number on this, Mr. Ward?

Mr. McGreal: It is Number 36.

Mr. Stewart: It is from the file of Number 36 in evidence here. "Immediately behind the residence building in which an illicit distillery was seized, was a two-car frame and tile garage. This garage was nearly connected with the residence, there being only a space of about fifteen inches from the southwest corner of the said residence to the northeast corner of the garage, and the subject, automobile, was in this garage, at the time of seizure. 1019 In its rear apartment or trunk were marks or rings on the floor where cans of alcohol had been sitting. These marks were very pronounced, and showed plainly where the corners of the cans had been cut into the wood of the trunk separation. Thus, inasmuch as the car had been used, and in furtherance of a scheme to defraud the Government of the tax imposed on distilled spirits, and was personal property found upon the premises of the illicit distiller, which is forfeitable."

I have just read you the Agent's report.

The Witness: I remember that case, the claimant was the wife of the bootlegger.

A. Yes, sir, I remember that.

Q. And did you, Judge, with the knowledge of the case—

A. The case was tried on that statement.

Q. That is right.

A. I dismissed the libel.

Q. And the Agent, Mr. Dows, an old man, an old probation agent, a little bit deaf, has testified here, in addition to this report, that there was another car, an old car which was found, which they didn't take?

A. Well, I think there was something like that.

Q. And the point involved here, Judge, is this. Were you sufficiently informed concerning the facts involved in that case to make a decision on the law and the evidence.

A. Well, it is the agents' statement. They never testified to more than their statement. They try their cases frequently on their statements, and that statement is not sufficient to forfeit a car. The car was not in the place where the still was, the car belonged to the wife, and I had no more right to take that car than I had to take yours.

1020 Q. And anything the Agent might have said could not have changed that?

A. Well, he stated in writing what he expected to prove, what he expected to swear to.

Q. And under these circumstances you very often hear the cases without the actual testimony?

A. Very, very frequently.

Q. And did Mr. Roth appear to represent his client, and Mr. Glasser appear to represent the Government in a proper fashion?

A. They not only appeared to, they did.

Q. Now, I am going to direct your attention, Judge, to a case involving a bootlegger who was convicted before you, named Svec, who has several other names, but you remember that individual?

A. I remember Svec.

I remember Mr. Glasser coming to me and telling me that some agent had gotten Mr. Svec to call up Mr. Glasser during the night at the Sherman Hotel.

Q. And when did Mr. Glasser come to you with reference to the next thing that was done, or, did he come to you immediately after this happened?

A. I think he did. My recollection is it was the next day. I wouldn't want to swear to that, it was very shortly after.

I was sitting here as one of the Judges when Mr. Glasser came to me and reported that incident to me.

Q. Now, I want to direct your attention to another case involving a bootlegger connected, I believe, with the Hodorowicz, on that, I might be mistaken, but anyhow, the occasion wherein Colonel Boddie represented the Defendant and Mr. Glasser represented the Government,

1021 and while the case was being heard, or just after it was heard, Mr. Glasser asked that the lawyers be permitted to step in your chambers, and something was said about a fix being in the case, you remember that?

A. I remember that case very well.

Well, you promoted Captain Boddie, and you demoted Captain Glasser. Captain Boddie was defending, and Captain Glasser was prosecuting, and at the conclusion of the case, whether I had imposed sentence or not, I don't remember, or whether I was about to impose sentence, Captain Glasser was acting for the imposition of a severe sentence, and Captain Boddie approached Captain Glasser, and said something to him which I didn't hear. Whereupon Captain Glasser took Captain Boddie by the arm, and walked up to the bench, and said, "Let the Judge in on this." And whereupon Captain Boddie said he would like to retire to chambers. We retired to chambers, and Captain Boddie said he had been informed by his client that that case was fixed. And I came back out into the court room, and I inquired of Captain Glasser—well here, go back a bit. This bootlegger was transporting, got caught transporting liquor and was hauling liquor, and the agents testified to having overheard telephone conversations between this bootlegger who was on trial, and some persons who were selling and transporting liquor to him. Not only one conversation, but several conversations took place, they were supposed to have been near some hardware store down here on the South side. And I said that the only thing suspicious about that case that I can see

was the fact that those folk who were selling the 1022 liquor were not tried, and I wanted to know why, and

Captain Glasser said that the agents had not given him any report of the sellers of the liquor. Well, I said it seemed to me they were the wholesalers, and this fellow was a little fellow, and I wanted to know why the big fellows were not brought in, and I said at that time—I said to the agent, whoever he was, I don't remember, I wanted to know from his superior, and forthwith why the big fellows who were selling the liquor and wholesalers were not indicted. They should have been. They had heard several conversations over the telephone, and I wanted to know why those fellows were not indicted.

That afternoon, and several times during that week, representatives of the alcohol tax Unit came to my chambers and explained why those other agents had not been indicted. The explanation which they gave was this. That the investigation of those wholesalers had been under the charge of an agent who had been employed without sufficient investigation, and they inferred he had been forced

upon them, and sufficient investigation had not been made of him. They implied that he had been a lawyer. That they had found that he was wrong. That they had asked him to make a report on these folk, Hodorowicz, I think they were the wholesalers. That the report which he turned in was so hodgepodge that they couldn't do anything with it, and that therefore, they had not transmitted it to the State's Attorney or the District Attorney for prosecution and that was the reason the wholesalers had not been indicted, and why no report had been made up on that, and that that agent who had gone wrong, and 1023 who had failed to make the report which was intelligible had been discharged and left the service.

My call is a busy one here in this district and has been for some time, and that included a large number of cases in which Mr. Glasser, during the time he represented the United States Government, appeared before me. I had an opportunity to observe his work.

Q. And did you have an opportunity of learning the general reputation that Mr. Glasser had, his professional reputation particularly among the Judges and Lawyers and his friends and acquaintances, and those that had passed before the Court?

A. I think I learned his general reputation.

Q. And was that good or bad?

A. Good, excellent.

Q. And as far as you were able to observe, in the conduct of cases before you, in which he represented the Government, did he appear to give the Government a conscientious service, and a service that the Government was entitled to?

A. He never failed to do an excellent job. I think he was an excellent prosecutor. That is my judgment of Captain Glasser. He was an excellent prosecutor, possibly too good for the criminals.

Mr. Ward: No cross-examination.

Direct Examination by Mr. Poust.

Mr. Roth appeared representing the defendant in the case of United States *vs.* Svec. I sentenced Svec to the penitentiary, I don't know how long. I observed the manner in which Mr. Roth tried his case for the defendant there.

1024 Q. Did he appear to do his duty in a lawyer-like manner?

A. He did. In that case I never saw him do otherwise.

Q. And that would apply to all the cases?

A. I never saw Mr. Roth try his case otherwise than in a lawyer-like way.

Direct Examination by Mr. Stewart.

Q. There have been several cases put in here where the implication has been made that pictures were not shown to the Judges. Now, do you remember whether or not pictures were shown to you in that libel case I spoke about?

A. No, and if anybody tried to show me pictures in that case, that kind of case, I would be impatient. I have tried hundreds of liquor cases and libel cases, and hundreds of still cases, and I know what the pictures look like. They come in in jury cases, I see them when the Jury sees them, too. I have hundreds of pictures of stills, and I know what automobiles look like, and I don't want to see any pictures of them.

Q. And generally the prosecutors appearing before you know that is your attitude?

A. Well, if he does not, he is not fit to be there.

Q. And Mr. Glasser was fit to be there?

A. I think he was.

Cross-Examination by Mr. Ward.

Q. In libel cases, the Government files a declaration in which it states that the particular automobile was used in a violation of the Alcohol Tax Law, that is
1025 true, isn't it?

A. I don't know, I suppose so.

Q. And that you rely on the District Attorney or the Assistant, to give you all the facts which will help you decide that case properly, that is true, isn't it?

A. Yes.

(Witness excused.)

LOUIS KAPLAN, called as a witness on behalf of the Defendants Glasser and Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Louis Kaplan. I didn't ever give Daniel Glasser any money in my life for any purpose. I had no reason to give him anything. I never did. I never did give him any money at any time for any purpose. I never promised him any money for any purpose at any time. I never did give him or promise him anything of value at any time. I did not give Norton Kretske any money during the time that he was an assistant United States Attorney. I did not promise him any. I did not give him or promise him anything of value. I did not come down town here with the witness Raubunas, and leave him at a doorway or near a doorway at the Great Northern Hotel, and walk over and meet the defendant Kretske, and have a conversation with him, walking towards some stairs, downstairs, I never did get in an automobile with the defendant, Daniel Glasser, any time or any place in my life. I did not ever get in an automobile with the defendant, Norton 1026 Kretske, at any time or any place in my life.

Cross-Examination by Mr. Ward.

I have known Raubunas for a few years, oh, about three years, three or four years. I knew him in 1936.

Q. You were in a still with him?

Mr. Hess: That is objected to, if the Court please.

Mr. Ward: Wait until I am finished.

Q. You were associated with him in a still out on 24th and Western Avenue, were you not?

A. No, sir, I never did.

Mr. Hess: I object.

The Court: On the cross-examination of this witness you may make a search and exhaustive cross-examination.

Mr. Hess: I will instruct the Defendant, or suggest to him as his counsel, that if he thinks any question or answer, or any question would tend to incriminate him, to make a claim, then Your Honor would have to rule on that.

The Court: Yes, that is right.

Mr. Hess: If the Court please, I want you to understand this, and I am sure you do, he was not put on, by his counsel, on his own behalf, he was forced on here by another counsel.

The Court: Yes, I understand.

The Witness: I knew Mr. Raubunas in 1936, he brought over— I do not know what business he was in in 1935 and 1936. I met Eddie Dewes in 1933, upon the highway when he was a State policeman. Oh, I know him. I do know him. I do know Adam Widzes. He bought an automobile off of me. I had an automobile place on the West Side at 3152 West Ogden. I do know Stanley Slesur. Oh, I know him for about probably ten years. I

know Tony Horton, the Defendant. Oh, I know him 1027 about two or three years. I know Norton Kretske.

Oh, I know him, I knew him when he was a kid about eight years old. I never did see Raubunas over at my garage. He did come to my Garage on the West Side. I only saw him twice. Oh, in 1936 or 1937, he brought over his sister, and she bought an automobile from me, that is the only way I know Raubunas. I talked to him there. Why, sure, that is the only way I know Raubunas. I was not in the Spring Grove still with him. I didn't have anything to do with that. I never was out on United States Highway 14 with Farber one day. I never went to the Insurance Exchange Building with Raubunas. I know Ralph Sharp. He bought an automobile from me in 1936. Oh, I know him for about four years. I know he was in trouble in Montana. I remember when his case was up before the United States Commissioner and he came down to arrange for his bond, his sister came over. I do remember that. I lived on 19th and Troy in 1935, 1936, 1937, 1938 and 1939. That is about four or five blocks from Kedzie avenue and Douglas Boulevard. My garage is about five blocks, four or five blocks from Kedzie Avenue and Douglas Boulevard. I was convicted of violating the Alcohol Tax Law, in Wisconsin.

(Witness excused.)

Mr. Stewart: On behalf of Mr. Glasser and Mr. Kretske I am going to call Mr. Balaban, one of the associate counsel in the case.

HENRY L. BALABAN, called as a witness on behalf of the Defendants Glasser and Kretske, having been first duly sworn, was examined and testified as follows:

1028 *Direct Examination by Mr. Stewart.*

My name is Henry L. Balaban. I live at 201 East Delaware Place, Chicago, Illinois. My office address is 11 South Lasalle St., Chicago. By profession I am a lawyer. I was admitted sixteen years ago. I went to DePaul University and the University of Southern California at Los Angeles, California. Mr. Glasser was a Freshman at De Paul University Law School when I was a Senior.

Q. And I want to direct your attention first to the case that has been in evidence here concerning Kwiatowski, were you an attorney for a man that appeared here as a witness?

A. I was.

I was in my office when he came to me with Frank Hodorowicz. It was after his arrest, several days thereafter, possibly a week or so, the exact time I can't recall. I did go out to a Bank on the South Side with him. I believe it was the South Chicago Trust and Savings Bank. Way out on the South Side on Commercial Avenue. I believe. Kwiatowski did not have in his possession his bank book at the time I discussed the trip out to the bank. I don't know where that was, he told me he had lost it. When I went out to the bank Walter Kwiatowski accompanied me. We did not meet anybody else, connected with this case immediately upon arrival. We waited, by previous arrangements made for the arrival of Frank Hodorowicz. The three of us made that arrangement in my office before we left.

Walter Kwiatowski and I arrived at the Bank first, Frank Hodorowicz was late, I believe the hour we were due to meet there was one o'clock, and he had not arrived at that time. We waited for him ten minutes or so, 1029 and when he arrived we all went into the Bank, and went to the Cashier. Walter Kwiatowski in the presence of Hodorowicz and in my office had told me that having lost his bank book and having appeared at the Bank, the Bank refused to give him his money because of his not being able to present his book, and thirty days would have to elapse before they would issue a new book,

and then he would be entitled to his money. We went to the Officer of the Bank, I believe he was either the Cashier or the Assistant Cashier, and we had a discussion with him. And the Cashier explained the rule of the Bank was that they could not under their rules, pay out money where a bank Book had been lost, and I demanded that that money be paid to Walter Kwiatowski, and by arrangement, the sister of Walter Kwiatowski, in whose name the account was as well as his, was there, and they signed the necessary papers and also an affidavit attesting to the fact that the bank book had been lost, and holding the bank harmless in the event the bank book was produced by anybody else, and after that was done, Walter Kwiatowski withdrew the sum of \$3750.00. However, that money was not paid to him. It was paid into the hands, and before me, to Frank Hodorowicz. Hodorowicz had previously asked me if I would handle this old man's case, and told me he had no money, and asked me if I would handle it for \$50.00. I told him I would. I then called the Alcohol Tax Unit, learning that the man had had \$4500.00 in cash in a bank, which they were about to levy on. That was the reason we hurried out to the bank, to get there before the Government got there, and I insisted that my fee be \$250.00, as and when we got 1030 that money, and Frank Hodorowicz in the presence of Walter Kwiatowski, paid me the additional \$200.00, having paid me \$50.00 previously.

Q. And is that all the money you received out of that withdrawal?

A. At that time, yes. Later on Kwiatowski told me that he went back after I had left the Bank. I left, leaving Hodorowicz, Kwiatowski, Kwiatowski's sister, and the daughter of the sister, and Frank Hodorowicz in the Bank. And Kwiatowski later informed me that he went back after I had left, and withdrew the remaining \$750.00 that he had.

Several months later he came to me and told me that after his case had been heard before the United States Commissioner, he went back into the bank and re-deposited some money, which money the United States had levied on and filed an attachment against; and I went there with him again.

He and I drove out there together, and we talked to the Cashier, and we were referred to the attorneys for the Bank, at which time I examined a lien that the Gov-

ernment had, which had been filed against a sum, I believe around \$500.00 and Kwiatkowski told me that the money belonged to his sister, and that his sister had deposited the money, and it was not his, it was hers. We examined the records of the Bank and found that that was not the fact, that Walter Kwiatkowski had deposited that money, and I told him that under the circumstances that nothing could be done about it. He brought his sister to my office later on, and I asked her if she had put the money in the bank, and she said "No". I asked her if she knew who had, and she said, "Well, my brother must have done that." And I said to her in Walter Kwiatkowski's present, "Your brother wants me to have you sign 1031 some papers that money was yours, and I advise you not to do it."

She said, "I am not going to get in trouble."

I said, "I am not going to permit you to sign any papers which are not the truth."

Kwiatkowski and she left, and a week or two later I got a call from an attorney by the name of Joseph Struett, who was Frank Hodorowicz's attorney, who inquired about the Defendants, and said he wanted to know all about the lien the Government had, and I explained to him all the circumstances as I have related to you, Mr. Stewart.

At that same time I learned that the Government had seized a car belonging to Kwiatkowski. He told me the circumstances of his case, and explained to me that he had been found with several bottles of liquor, and that the car had been used for that, and that the Government Agents had him approach the premises, and then I advised him that I couldn't do anything about it at that time. That was during the pendency of this case before the United States Commissioner.

Later on I told him I would try to get the car for him, but he never paid me for it, and I didn't do anything about it.

I have held an official position here. I was an Assistant United States Attorney under George E. Q. Johnson from 1928 to 1931, to 1932.

I did appear before Commissioner Walker and represent Kwiatkowski in his case. I did not at any time in my life ever give any money to Daniel Glasser for any purpose. I did not ever promise him any money or anything of value. I did not ever in my life give any money to the defendant, Norton Kretske. I did not ever give or prom-

ise him anything of value. I did not before I went to trial on this Kwiatkowski case, before the Commissioner, have any conferences or interviews with the gentleman in charge of the Government. I did not do anything to influence them in any way concerning the conduct of their duties in that case, representing the Government. Kwiatkowski came to me afterwards in the company of a man representing himself as a nephew whom I later learned was a Government Agent.

As Kwiatkowski came into my office, as near as I can recall, it was, I should say, after we had tried his case before the United States Commissioner, and introduced the man he had, who had a Polish appearance, as his nephew. And they explained they wanted to talk to me about his case, and that he had been indicted again; and I invited them in the office, and we sat down and discussed the situation. I don't recall that was said, but the thing that stood out uppermost in my mind at that time was that Kwiatkowski—I told the nephew I didn't want to have anything to do with a man who wanted his sister to perjure herself in an affidavit, in a letter—And I said to the man whom I understood to be the nephew, I said, "By the way, what is your aunt's name?"

And he said, "Never mind about that. What about this man's case?"

I said, "Are you this man's nephew?"

He said "Yes."

I said, "How does it happen you don't know your aunt's name?"

And he said, "Well, now, I want to know about this man's case, he has been arrested, he has been indicted, meaning he will have to have a bond."

Well, I said, "Why don't you get it? Why don't you go over and get a bond? If you want me to represent the man, I will be glad to do so, but he will have pay me for it."

And with that he left the office. During that conversation I recall Kwiatkowski said, "I gotta go now. I gotta go now."

1033 Q. Now, I direct your attention to the case of Pete Hodorowicz, wherein you represented the Defendant before the Commissioner on a motion to Suppress, do you remember that case?

A. I do.

Frank Hodorowicz engaged me shortly before this hearing, a week or two. I prepared a Petition to Suppress. I don't recall how long in advance of the actual disposition of the case I prepared that petition, but it was several days, possibly a week, or maybe more than that.

Q. Now, did Mr. Kretske suggest to you in any way that you should draw that Petition?

A. I didn't know Mr. Kretske at that time.

Nobody in connection with the Government made that suggestion to me. I am not in the habit of taking suggestions from the Government. That Petition was prepared by me in the ordinary course, in the proper defense of my client. I filed motions to Suppress before, before the Commissioners, and before the Courts.

Q. Now, tell us what was said, as near as you can remember, concerning the preparation of that Petition, was the ownership discussed, or did you explain that somebody would have to sign as owner in order to be in a position to make that Petition?

A. Yes, sir, we discussed that pro and con in the office, and the facts regarding the sale were given to me, and the legal phases of it were discussed between my client and me, and as I recall, both Peter Hodorowicz and Clem Dowiat were in my office when the Petition to Suppress, and Motion to Suppress, were dictated to the stenographer. They signed it, whether they came back and signed it after it had been dictated or not, I can't recall. This is almost three years ago.

1034

Cross Examination by Mr. Ward.

I know the defendant, Tony Horton. I believe I have known him ever since he is in Chicago. That is, since 1932. I don't believe I knew him when I was an Assistant United States Attorney in this building. I didn't know him then. I left the building as an Assistant United States Attorney about the middle of 1931. I did not know him then. I think I got acquainted with him after that about 1932. I put up part of the money for his bond in this case. I think \$1000.00. I was not in the bond business with Horton. I have loaned him money.

Q. You put up money on bonds, have you not?

A. I have loaned Horton money.

Q. Answer my question. Did you put up bond money with Horton?

A. I have loaned Horton money, and put up the money on the bonds, if that is what you want to know.

I loaned him money in the Buchanek-Netko case. I think between five and six thousand dollars. I had Tony Horton's note and word for security.

Q. And isn't it a matter of fact you gave Tony Horton \$5,000.00 or \$6,000.00 because he put up the money in the Buchanek-Netko case with the Clerk of the United States District Court?

A. He put it up with the Clerk of the District Court. Indeed I did know it was put up and I got it back. The Netko-Buchanek bond was forfeited, for a day. Yes, it was forfeited, it was forfeited for a day.

Q. All right, you insist, I will put it in; for a day.

A. Well, you were there, you know about that, Mr. Ward.

At that time I think Horton had between six thousand and eight thousand dollars of mine that I had loaned 1035 him to put up on bond in cash. I had Tony Horton's note as security for the \$8,000.00. A promissory note with a judgment clause in it. I did consider that I was loaning the money to Horton. I got the receipt he had put up as collateral. He paid me 5% for the use of the money. Well, 5% for the entire period of the loan.

Q. In other words, if the bond was up for two days you would get 5%, is that right?

A. Two days or a year.

Q. And you would have a promissory note for \$6,000.00, or \$8,000.00 for the cash, and you got 5% for one or two days, is that true?

A. That has never been—I can't answer that, if the bond was up for a day.

I was interested in having the bond forfeiture vacated in the Buchanek case. I wanted to see that the defendants were in Court. I was interested in having it vacated so that the money would be protected. I had loaned the money to Horton.

Q. And the real reason was it was your money, and you and Horton were in the bond business together, and you knew that the forfeit was made, and if the forfeit was not vacated you would be \$5,000.00 cash out, wouldn't you, that is right?

A. No, I don't agree with you on that conclusion. That is your conclusion, Mr. Ward. I would give Tony Horton every penny I have got.

Q. Just a minute. You understand then, if the forfeiture of that bond was to remain unforfeited that money wouldn't escheat to the Government of the United States, you mean to say that?

A. If there had been a forfeiture made, I understand that, Your Honor, I would like to explain that whole situation.

1036 I loaned Tony Horton \$6,000.00. It was either \$5,000.00 or \$6,000.00, and I continued to loan him any money he asked me for that I had. I knew the Defendants, or at least one of them, in that particular case. The case Mr. Ward is asking me about, and when Horton came to me and asked to borrow some money that he wanted to put on the bond, and told me who the Defendant was, I told him I would be glad to do it. I was not the attorney in that case. The Defendants, of whom there were three or four, had a plea in arraignment date. At two o'clock the case was called. At two o'clock we went up on preliminary call, that is what is known as an arraignment date, and the case was continued thereafter for several weeks, possibly a month, and instead of coming in here at ten o'clock in the morning, which is the hour Court convenes—Instead of coming in at ten o'clock in the morning, the Defendants came in at two o'clock that afternoon, and Mr. Ward had those bond forfeited. I went to Mr. Ward, and this, I believe, was on a Friday or Saturday, and told him that I represented Tony Horton's surety, and wanted to know what I could do to release the forfeiture in that case, that the defendants were available. We would produce them at any minute they should want them. He said, "I don't want this. I want them to be in jail over the week-end."

I said, "Mr. Ward, this is a very—Well, nevertheless, that was the situation. and I was interested.

The Court: The evidence is they were not there at ten o'clock, they should have been there, and the fact they were not, the bond could have been forfeited at that time, and the bond was forfeited. And the next day vacated.

A. That is right. Several days later.

The Witness: I didn't hire Mr. Passman. I met him once on that occasion that I have just related to the Jury.

I knew that Mr. Kretske was in that case. I didn't
1037 know that he Authorized the Petition to have this forfeiture vacated and set aside. I believe he would

have done it, though. The only interest I had in that case was my bond money, that is true. That is right that Tony Horton is the man that signed Kwiatkowski's bond.

Q. When did you first get acquainted—When were you told about Kwiatkowski for the first time?

A. That day he came to my office some time in August, August of 1938, I believe.

I don't recall what day it was in August, it was during August 1938. I do not recall the date he was there. I say, as near as I can recall it was in August of 1938. That is most likely that it was between August 26 and August 31. It is most likely, yes.

Q. And you know that a Special Agent from the Alcohol Tax Unit came over to Mr. Glasser's office on the 26th day of August and gave Mr. Glasser a letter in which was contained a statement that Kwiatkowski had violated the Alcohol Tax Laws, and that he had a bank book in his possession for \$4500.00; did you know that?

A. I don't know, and you don't.

Q. You did not know it?

A. I did not. I had no means of knowing it.

Q. But within a very short time, namely, within a few days, you appeared out at the South West Trust and Savings Bank—or the South Chicago Savings Bank, with Mr. Kwiatkowski, and drew that money out of the Bank, did you not?

A. I went there the day he came in my office.

I did do that and I believe that was between August 26 and August 31. I think it will show in the Bank, the date that appears from the Bank record.

1038 I heard Mr. Kwiatkowski on the stand but whether

I understood him or not I don't know. He left the impression that I got the money at the Bank there. I did understand him to say I was out to the Bank with him. I told the Jury I was there with him, and took him in my car. That is what I said. And when we got out there, we drew out \$3750.00. I got \$200.00 of that \$3750.00. I don't know how much of the \$3750.00 Kwiatkowski retained. The money was in Frank Hodorowicz's hands in the bank, and Frank Hodorowicz paid me. That is right that I talked to Mr. Bailey about this case in your office at one time.

Q. Did you ever tell Mr. Bailey on that occasion, regarding this Bank, that Frank Hodorowicz was there with you at that time?

A. That was never discussed.

He did not ask me about this transaction. I will tell you exactly what he asked of me, if you want to know. He wanted to know if Peter Hodorowicz or Clem Dowiat wanted to retain me. I told him no, he didn't. And—wait a minute before you ask me another question, let me answer your previous one. Then he asked me about the bonds that you have just asked me, in the Buchanek-Netko case, and this was the only two matters he asked me about, and you were there, and Mr. Devereux was there, and there wasn't a mention of the word Kwiatkowski at that time, or at any time between Mr. Bailey and me, and that is the only conversation he and I ever had.

The subject about Frank Hodorowicz was not discussed on that occasion. How could I mention it? I met Frank Hodorowicz out at the Bank by appointment. He came to my office. He brought Kwiatkowski there. I think it was, oh, it was several days—it was in between the day he was arrested and the day we went to the hearing 1039 before the United States Commissioner. I didn't keep a record of that case. I do keep a record of the cases that I handle and the fees that I receive. I received a total of \$275.00 in this case. That is all. That is true that Kwiatkowski had an automobile and that was seized by the Government.

Q. Did he talk to you after the discharge—his discharge before the United States Commissioner, and ask you this question, and did you make this answer?

"I would like to get my automobile back."

And you said, "Don't talk about the automobile, you are liable to stir up trouble."

Did you say that?

A. He never said that to me, and I never said that to him.

I never said that. He asked me to get the car back when he first came in the office. I did not make any effort to get that car back. He did not pay me for it. I never did make any effort to get it back. The case came on before the Commissioner and I talked to Kwiatkowski and he told me about the facts. Mr. Glasser represented the Government. The witnesses were called to testify before the Commissioner. At that time Kwiatkowski paid me \$250.00. I don't know if he ever gave Horton any money except what I heard in this court room.

He paid him for the bond. I believe I do remember my cross-examination of Kwiatkowski.

Q. Do you remember asking Kwiatkowski isn't it a fact he gave you \$800.00.

A. That he gave me?

Q. Yes, sir.

A. Yes, sir.

Q. You remember standing here and asking him?

A. I do.

Q. And saying isn't it a fact you gave me \$800.00?

1040 A. No, I asked him if it was a fact. Not isn't it a fact. There is a little difference between those two questions.

Q. And that was after he said that he paid Tony Horton \$600.00, and you stood here and you cross examined him and said, "Isn't it a fact that you paid me the \$800.00," is that true, yes or no?

A. No, not at all, and you misconstrue that entire cross examination, like you have misconstrued a lot of things.

Q. I am just emphasizing the way you asked the question.

A. May I explain that, Your Honor?

The Court: Well, the record itself will show. We will check that. It will speak for itself.

Mr. Ward: All right. And he insisted on saying \$1075.00, you heard him say that, didn't you?

A. I sure did. I believe everybody did in the court room.

Q. And it was \$275.00 you say that he paid you, and \$800.00 in addition, that makes \$1075.00, doesn't it?

A. Well, \$800.00 and \$275.00 make \$1075.00, yes.

Q. And when you said that he paid the \$800.00, in addition to saying that he said that he paid you \$275.00, did he not?

A. He never said he paid me \$800.00. I asked him. May I reply to that question, Your Honor?

The Court: You may.

A. As I gathered it from the witness on the stand, he first stated he gave Horton the money, then he said that at the bank, when the proceeds of the withdrawal were paid out, he was short \$1075.00, then I asked him, "Did you give me that money?" And as I recall it, he wouldn't say that he gave it to me. I think I stated the situation as it existed, and as it took place in this court
1041 room.

That is right that Kwiatkowski was discharged before the Commissioner. I already answered that Mr. Glasser was there. He was there, the Commissioner was there, the Agents were there and I was there at the time he was discharged.

Q. All right. Now, then, you had another case, or you had more than one, isn't that true?

A. Well, I have been successful in having a few cases, Mr. Ward.

I have handled quite a few liquor cases. No, that is not right that Mr. Glasser has been in all those cases.

Q. How many did you have?

A. I can't say I have handled more than—

Q. All right; you didn't keep any record of it?

A. Just a minute. I am trying to answer your question before you interrupt me.

Q. All right.

A. I think I have handled a dozen liquor cases, I don't recall Mr. Glasser appearing in all of them. I think you appeared in a few in which I got my clients discharged, Mr. Ward.

Q. I don't know how to try a case. You might as well finish it; is that what you mean to say?

A. Well, you said it. Let the Jury decide.

Q. What two cases were they you had with me?

A. Cases in which Judge Woodward appointed me, and one in which you failed to prove the Venue and the Court discharged the Defendant.

That was the case of a colored man by the name of Connors. That was tried I think about four or five months ago. I will get the first name for you. The other case was

before the same Judge. I think that you left the 1042 court room and left your assistant to try the case,

I think Mr. Lube tried that case. Judge Woodward appointed me. They were both colored men. You neglected to tell the Court it was about evidence occurring in the City of Chicago, and the Court found—

Q. That is what you say, is that it?

A. Well, that is what the Court said, I assume—

Q. I see you are just repeating that. All right, now, what were the other cases you appeared in, you remember those, so we will know what are the others.

A. Which other cases, you mean liquor cases?

Q. The other eight you had.

A. Oh, I think I had a case of John Kasnercheck.

Q. Yes; and what was he arrested for?

A. Liquor violation.

Q. And he was put on probation, was he not?

A. The Judge put him on probation after he was examined by the Probation Officer.

Q. Yes. And that is the Kasnerchek who belonged to the Hodorowicz crowd, isn't he?

A. I don't recall he did, he might have. I think all of those South Side bootleggers belonged to that same Hodorowicz crowd.

I don't know who signed Kasnerchek's bond. I didn't. I don't know that Mike Hodorowicz went co-surety on that bond. No, I do not recall getting him out on bond. I think one of the Hodorowiczs sent me Hasnerchek. I don't recall if Mike signed his bond with him. I don't recall which one of the Hodorowiczs sent me that case. I would have no occasion to keep any record of who went on the bond and who sent a case to me.

Q. Do you recall—all right. Now, this Pete Hodorowicz case, you say that you discussed the proposition of their claiming ownership of that still with them?

1043 A. It was not the prosecution, Mr. Ward, we discussed the facts, and it appeared in our discussion that the Government agents had made a search here without a warrant.

Q. Well, there is nothing wrong about a lawyer advising a client?

A. Well, it would seem so from the way you ask the question.

I did advise them that in order to file a petition they would have to claim ownership of the property; and what was done after that they told me—after I advised them of that, the Petition was signed. The Petition was signed; we went to a hearing; the agent testified; the Court heard the evidence; the Defendants were discharged, because there was no search warrant, and the Court found that the allegation contained in the Petition and Motion to Suppress were true. I mean the Commissioner found. The defendants were discharged.

Q. You say you hurried out to the Bank to draw this money out so that the Government wouldn't get it. That is what you said, didn't you?

A. I wanted to withdraw the money, yes.

Q. And the reason for that was that you knew that for the Kwiatkowski Alcohol Tax Law violation that the

possibility was that the United States Government would file a lien on that money?

A. Oh, that was possible.

Q. That is what you had in mind?

A. That was possible.

Q. And that is why you hurried out to get the money?

A. I wanted to be able to get my fee.

1044 Q. And you also wanted to get the money out there, too, didn't you?

A. That is what I went there for.

(Witness excused.)

HAROLD GERHARDT, called as a witness on behalf of the defendant, Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Harold Gerhardt. I live at 4233 Kammerling Avenue. I am a building manager. I work on the 7 South Dearborn Street Building. The defendant, Norton Kretske had an office there. I did, at his request, bring my records with me.

Q. Will you examine them, please, and tell us the day Mr. Kretske first came in as a tenant of yours?

A. We turned the offices over to him on October 5, 1937.

Q. And the paper you have, is that the original lease signed by him?

A. Not the original lease, I have not been able to get—this is a copy of the lease. The date that I have here is the date that we turned the electricity on in the office.

This is from my records and that is the first time he was in there.

Cross-Examination by Mr. Ward.

This record here that I have shown is Passman and Kretske. That is Harold Passman.

1045 Q. How long did Harold Passman—how long had Harold Passman been in the building before October, 1937?

A. That I don't know, I came to the building in August, 1935, and he was a sub-tenant of the building.

Q. At that time?

A. When I came in, yes, sir.

(Witness excused.)

CHARLES A. WOODWARD, called as a witness on behalf of Defendant Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Charles A. Woodward. I hold an official position here. That is, Judge of the United States District Court for the Northern District of Illinois. I have held that position since March, 1929. I have been a member of the Bar since 1900. I know the defendant, Daniel Glasser. I knew him during the time he was an Assistant United States District Attorney.

Q. Judge, directing your attention to a trial that was held before you wherein Frank Hodorowicz and a couple of others were convicted by a jury, do you remember that the defendant Glasser at that time represented the Government?

A. Frank Hodorowicz?

Q. That is it.

A. Yes.

Q. And was Mr. Hess here at the table, representing the defendants?

A. He represented one of the defendants, I think that was Frank.

1046 Q. Now, after the jury returned a verdict of guilty do you remember if Mr. Hess stated anything about probation?

A. I don't think there was very much said. The suggestion was made for probation for the defendants after the verdict of guilty was recorded and judgment was entered, and rather hastily I said that was—in substance, it was not a case for probation, and I denied probation. There was not much argument about it.

Q. Now, did Mr. Glasser appear to represent the Government in a proper and conscientious manner?

Mr. McGreal: I object to asking this witness a question this jury is here to determine, it is an element that has to be considered by this jury.

The Court: Objection sustained.

Mr. Stewart. Well, just tell us what Mr. Glasser did do that you observed?

A. As I remember it, there were two trials involving the Hodorowicz brothers. I have no recollection of the details but one trial was held in my regular court room on this floor and a second trial, as I remember it was held in the Court of Appeals room on the seventh floor.

Mr. Glasser represented the Government and presented the evidence, examined witnesses for the Government on direct examination, cross-examined the witnesses for the defense, made the closing statements and argument to the jury. The case was a usual bootlegger's case and did not involve any particular still in the presentation of it.

The agents testified, I am not sure whether any other witness aside from the agents—and told the story just as they do in the ordinary Internal Revenue case.

Q. Mr. Hodorowicz testified here that he was convicted on a pack of lies and because of the method which the prosecutor used in presenting his case—Judge, 1047 you have heard the witnesses and observed their demeanor on the stand; did you not?

A. I did.

When the jury brought in a verdict of guilty, I did hear whatever counsel had to say on either side, concerning the matter of a motion for a new trial. I did naturally approve of the verdict in a legal sense by sentencing the defendants. I did not observe anything out of the way in the conduct of Mr. Glasser in the presentation of that case.

Q. Now, I take it, Judge, that you have heard a great many of these bootlegging cases.

A. I have heard several.

Q. And during part of the time they were being handled in your court room by Mr. Glasser.

A. I did.

I did not observe him do anything that was outside of the line of his conscientious duty as a United States District Attorney. It very frequently happens in conducting my call that cases are submitted without any contest on a plea of guilty. It is the general procedure when that happens the United States Attorney often reads a summary of his report and then I listen to anything anybody else has to say in order to ascertain the facts.

Q. And have you often disposed of cases that are submitted in that way without looking at any pictures? .

A. I very seldom look at pictures.

Cross-Examination by Mr. McGreal.

Q. Judge, all that you have testified to here was to facts that occurred in your court room?

A. That is all I know about.

1048 Q. You have no information as to what occurred outside of your court?

A. Not at all.

Q. And in that Hodorowicz case, your Honor, Judge, wasn't there a motion for directed verdict sustained in one of the cases by your Honor?

A. I have not looked at the record but my impression is that the case was tried on this floor. I did sustain a motion for a directed verdict as to some but not all of the defendants, I am not sure.

Q. That was as to some of the defendants involved in this case you referred to, isn't that correct?

A. I am not sure but I think there was one other defendant in the case I tried upstairs, the other defendants were the same.

Q. Do you recall a defendant in this case by the name of Clem Dowiat?

A. He was in both cases.

Mr. Glasser did not tell me that the Grand Jury voted a no bill for Clem Dowiat in another case.

Q. Was there a defendant there named Peter Hodorowicz, Judge?

A. Well, that name sounds familiar. I believe he was a little fat fellow or short fellow.

Q. That is it, a short bulky fellow, he was a defendant?

A. I think he was a defendant in both cases.

I have no recollection whether Mr. Glasser did or not when I was sentencing Pete Hodorowicz, tell me that on January 12, 1937, Pete Hodorowicz and Walter Hort were brought before the United States Commissioner and held to the Grand Jury.

Q. Did he tell you at that time whether Pete
1049 Hodorowicz and Walter Hort never were presented to the Grand Jury in connection with that arrest?

A. I don't recall the name of Hort in any connection whatever. I have so many of those cases I just simply can't remember each individual case, what was said to me when sentence was pronounced.

Q. Did he tell you at the time while you were sentencing the defendants that Pete Hodorowicz was arrested in connection with a still at 120 East 118th Place?

A. I don't recall it at all.

Q. And if he did tell you, you would recall it, wouldn't you?

A. No, not necessarily, because I have so many of those cases I don't try to burden my mind.

Q. Did he tell you a motion to suppress the evidence in that case was sustained by Commissioner Walker?

A. I am sure I can answer that conscientiously and say I was never told that.

Q. Did he tell you—was there anything said at that time about the resistance of Tony Hodorowicz,—made at the time of his arrest?

A. I never heard of him.

I have never seen, that I know of, Government's Exhibit 160 for identification. I never saw Government's Exhibit 163 for identification.

Q. Did you know at the time you sentenced these defendants, Judge, that they were the subject in a conspiracy case, report then being made by the Alcohol Tax Unit of the Government of the United States?

A. I think the only information I had as to that was the sort article that appeared in one of the newspapers the morning after I sentenced him.

Q. And at the time you sentenced him you did 1050 not have that information?

A. Whether I knew that before or after I am not sure. The only source I knew it from, was there was a short article in the newspaper.

Q. What would be the maximum sentence that could be imposed upon those defendants as the result of the indictment that was before you, Your Honor?

A. I would have to ask the District Attorney to tell me, I don't know.

Q. If I told you it was five years, did Mr. Glasser tell you at that time that the maximum penalty was five years?

A. I don't know whether I asked him or not.

Q. If you had the information I told you about or

mentioned, would you still have sentenced him to one year or nine months, as the record shows?

A. I probably would. The only thing I do in sentencing them, I pass on the evidence in the particular case. Each Judge has his own ideas as to what facts he ought to pass upon or what facts he ought to act upon in passing sentence.

Q. You had no information other than that given to you by the United States District Attorney in charge of that case; isn't that correct?

A. And what I heard in the court room.

Q. And what you heard in the court room, that was presented by him.

A. That is all.

Q. And that is all the information you had at that time?

A. That is all.

Redirect Examination by Mr. Stewart.

Q. Well, Judge, do you think it would be proper for a United States District Attorney to inform you that a 1951 defendant who was up for sentence had been in some other cases where he had successfully won those cases, do you think that would be proper?

A. Well, now, you are asking me a question of ethics.

Q. Well, the lawyers before you try to conform with your ideas of these things, don't they, Judge?

A. Will you kindly read me the question?

Q. Do you think it would be proper for a District Attorney to inform you that a defendant who is up for sentence had been tried before the Commissioner in another case in which case he had been discharged by the Commissioner, and expect you to take that into consideration in entering your sentence?

A. In answering that I will have to elaborate a little bit. Under the present practice in my court, at least, and I think in courts of some of the other judges, as a general rule, after a conviction or after a plea of guilty, the matter is referred to the probation department for a pre-sentence investigation and report. The probation department is a very competent department and renders to the judge a very detailed report in practically all cases. And the report of the probation department would contain

a great deal of information concerning a defendant which would not be admissible in a trial of a case, and among the information which would be submitted by the probation department and which would be considered by the judge, would be the information concerning which you now ask me. My own judgment is, it is a very proper procedure. As a judge I want to know it.

Q. Well, whether or not that procedure is followed, of course, would be up to the judge who had the verdict before him.

A. As I say, it is a question of ethics and a question of procedure, and it is a question which each individual judge must decide for himself.

Q. Well, now, Judge, I take it that you entered what you thought was a proper and just sentence in the case that was before you concerning the Hodorowicz people.

A. Why, certainly.

Q. And would your sentence have been the same if Mr. Glasser had told you that the Government was trying to prepare a conspiracy case against the same defendants?

A. In all probability this would have been my action. I would have deferred sentence until the conspiracy case had been presented to the court and a judgment had, and acted upon the verdict in both cases. In other words, I would have deferred sentence.

Q. That would have been true if there had been an indictment, but suppose you had heard the Government was just ready to present one or to the point of submitting a report on one. You would be willing to let that take its course, wouldn't you?

A. Well, it is pretty hard to answer an abstract question of that kind.

Q. I will make it concrete in this particular case, Judge, this report that was handed to you is a report made out by some alcohol agent who at that time had that case in just about the stage where a report is made by the agent to the District Attorney and the District Attorney had not yet passed it or not yet taken it before any Grand Jury. Would you be interested in knowing about that report particularly in order to have sufficient information to sentence Frank Hodorowicz who was before you on a verdict of guilty by the jury.

A. No, I wouldn't care anything about that report.

1053 Q. And you knew in a general way that Frank

Hodorowicz was supposed to be a bootlegger, didn't you?

A. Well, I read in the paper after the trial that he was supposed to be a bootlegger.

Q. Supposed to be a bootlegger?

A. That is what the paper said. I don't know anything about it otherwise.

Recross Examination by Mr. McGreal.

I don't remember the day of the trial. I don't have any knowledge as to the date of the report.

(Witness excused.)

EDWARD J. HESS, called as a witness on behalf of the defendants Glasser and Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Edward J. Hess. My address is 6826 Bennett Avenue, Chicago. I have been a member of the Bar thirty years. I have held one official position in this community, Assistant United States Attorney from 1923 to 1929. I was in charge of the office at one time for one month.

Q. Now, I want to direct your attention to the case against William Workman, the first witness in this case; were you his attorney?

A. I was.

Q. Well, directing your attention to the hearing in open court, was Judge Sullivan informed concerning the size of the still that was involved?

A. He was in a general way.

1053½ Q. Now, you represented Frank Hodorowicz in the trial had before a Court and Jury before Judge Woodward?

A. All of the defendants in those cases.

Mr. Glasser represented the Government. I did not at any time in my life give Mr. Glasser anything of value.

Q. Did you ever promise him anything?

A. Of course I consider that an insult to ask such a question as that of me. I don't think any attorney should ask anything like that. If I would graft a man like that.

Q. In the case you tried you lost your case?

A. I lost them both.

I absolutely tried them on the merits. I gave them all I had. Mr. Glasser represented the Government on the merits of the case.

Cross-Examination by Mr. Ward.

I recall the indictment in the Hodorowicz case. There were two. Two counts apiece. Well, they were printed form with the name typewritten in, I think the first count had to do with transportation or something of alcohol. The second count was possession, I believe in both of them. The one was possession, the other was sale. The evidence show I all about the sale of liquor. The indictment charged possession.

Q. And you knocked out one of them, didn't you, Mr. Hess?

A. I didn't knock anything out.

Q. Well, you argued to have one of them knocked out?

A. I got a directed verdict as to that.

You bet I argued that. That is right, I had one left. I first started to argue about the men. Now, about the indictment. Well, I will tell you, I just can't remember what I did argue. You argue most anything to win 1054 that you can. There was a directed verdict as to one count, and as to two men. As to Pete and Frank on one indictment. That is right. The court held there wasn't sufficient evidence so far as that indictment was concerned and directed a verdict.

(Witness excused.)

JOSEPH BOLTON, called as a witness on behalf of defendants Glasser and Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Joseph Bolton. My residence is 1211 La-Salle Avenue, Oak Park. I am a brother of Judge Bolton. I am a member of the Bar since 1916. I was representing a defendant in the United States District Court named William Alfred Burba. I remember that Mr. Glasser ap-

peared as the representative of the United States Government. My recollection is that it was before Judge Barnes. My client pleaded guilty before Judge Barnes. The matter was referred to the probation people upon my application. I made a motion for probation after my client pleaded guilty or the evidence was heard, or whatever was submitted to the court. Mr. Glasser did not recommend probation.

Cross-Examination by Mr. Ward.

Q. Your recollection of these facts were refreshed just a moment ago, Mr. Bolton?

A. Somewhat, Mr. Ward.

To the best of my recollections, my case was tried, oh, two years ago, two and a half years ago. And after the case was tried I dismissed it from my mind and I have not thought about it ever since that time.

(Witness excused.)

1055 HUGO P. COOK, called as a witness on behalf of the defendant, Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Hugo P. Cook. I live at 1519 Irving Park. I am a commercial photographer. It is my business, under my name at that address, 1519. At the request of Mr. Glasser I did go out to the vicinity of Kedzie and Douglas Boulevard and made some pictures, a week ago Saturday, that is right, 2/17/40. The pictures marked Nos. 85 to 91, inclusive, were taken by me at that corner.

Q. I want to direct your attention particularly to the sidewalk which runs from the door out to the Douglas Boulevard curb. Did you measure that sidewalk?

A. The sidewalk there is—from the building line to the curb? That is approximately 40 feet, 40 or 45 feet.

Q. And I direct your attention to Exhibit No. 90, and will ask you whether or not you stood inside the door and looked out and obtained the view shown by that picture?

A. That is right.

I was out there about 10:30 in the morning. It was on

Saturday. Mr. Glasser, Mr. Kretske and there were approximately six or seven people in the door besides us. Mr. Glasser drove by in the automobile and I observed the lighting and shadows, and the general set-up. It was impossible to recognize anyone in the car from my position in the door, out to the curb. My camera was in proper working order. I am familiar with the scenes and the pictures clearly portray the views they purport to show.

Mr. Stewart: I offer them in evidence, your Honor.

(Mr. Ward examined the witness at this point.)

1056 — I took the pictures on Saturday, February 17. The only time I had ever been on the premises was Saturday. I could not say whether the premises were like this a couple of years ago.

Mr. Stewart: I want to use this gentleman as a character witness, Judge.

Direct Examination (Continued) by Mr. Stewart.

I have known Mr. Glasser over twenty years. I know his family and friends and visited back and forth.

Q. Did you learn the general reputation he enjoyed in this community as a decent law abiding and honest citizen prior to the trouble in this case?

A. The best there was.

I do his reputation. A very fine reputation.

(Witness excused.)

RALPH J. GUTGSELL, called as a witness on behalf of the defendant, Roth, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Ralph J. Gutsell. I live at 1260 North Dearborn Street, Chicago, Illinois. I am a lawyer. I have been practicing law here since the fall of 1916. I am acquainted with Alfred E. Roth, one of the defendants in this case. I have known Mr. Roth for about ten years. I do know the two men who testified here by the name of Edward Wroblewski and William Wroblewski. I have known Edward Wroblewski from, I judge, the middle of March 1939; and William Wroblewski, I met in May of

1939. I represented Edward Wroblewski in the Southern District of Indiana in a criminal prosecution. To 1057 the best of my recollection I first became engaged in that proceeding about the last week, or around the 20th of March 1939. Edward Wroblewski came to see me. On that occasion he asked me to represent him in a removal proceeding under Commissioner Walker here. There was a removal proceedings pending here at that time. I appeared before the commissioner and represented Edward Wroblewski at that hearing, before Commissioner Walker here in this building. We waived the hearing and agreed to appear, to have him appear in Indianapolis. The charge there was conspiracy involving alcohol. I had a conference with Mr. Roth in connection with that matter.

Edward Wroblewski advised or told me, rather, when he was in my office, that he had a case pending in the Northern District of Indiana, and said it grew out of the same sort of proceedings; and I asked him who was representing him in that case, and he told me Mr. Roth was representing him. He said it had been tried and they were now appealing it to the Circuit Court of Appeals. After that I called Mr. Roth on the telephone to talk to him, to familiarize myself with the two cases. I next went to Mr. Roth's office and Mr. Roth showed me the indictment in the Northern Indiana case. We discussed quite freely about half an hour and Mr. Roth suggested it was double jeopardy. I started a petition to present in the Southern District of Indiana. It was presented and denied. At the time we presented the question to the Southern District of Indiana, Edward Wroblewski pleaded not guilty. After the ruling, we withdrew the plea and he pleaded guilty and received sentence. The sentence in that case was eighteen months. It was entered on May 5, 1939. There was something in that sentence in relation to whether it ran concurrently or consecutively with the sentence imposed in the Northern District of Indiana. It was that it was to run concurrently with the Northern Indiana case. We had some discussion about that with the District Attorney there. He intimated he would have 1058 no objection to it. Judge Baltzell imposed that sentence, to the best of my knowledge, the 5th day of May 1939. I called Mr. Roth afterwards, the second day after, about the—and advised him of the conviction. It was before the conviction by the Circuit Court of Appeals on the Northern Indiana case. I should judge all of two months before.

Q. That decision affirming the conviction in the Northern District of Indiana was handed down in the month of June, 1939?

A. Then it would be just one month.

There was something said about the attention to be given by either me or Mr. Roth on the two sentences running concurrently. I called Mr. Roth on the phone and advised him of the conviction and said I was very anxious for him to take care of the situation in Northern Indiana when the sentence was handed down,—to be sure and make sure that it was running concurrently with the Southern District of Indiana. Well, other than the fact Mr. Roth told me he would go to Indiana and talk to the attorney at the time and make sure it would run concurrently. I cannot remember anything further on it. Agent Bailey was connected with that prosecution in Southern Indiana. I had a talk with Mr. Bailey about that case. Mr. Bailey for the first time—I believe the day that Edward Wroblewski was convicted, we proceeded to the floor above the court room and did discuss the case.

Q. You mean subsequently in relation to that case?

A. Possibly within a week, Mr. Bailey, and I believe, Mr. Devereux—I am sure Mr. Bailey and another gentleman called at the office about it.

(Witness excused.)

1959 JOHN F. HAAS, called as a witness on behalf of the defendant, Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is John F. Haas. I live in Chicago, Illinois. I have been a member of the Bar since 1900. I received my education at Yale University of Law School. My academic education was at Lake Forest University. Part of my legal education was at the Old Chicago College of Law, which at that time was part of the Lake Forest University. I am Judge of the Superior Court of Cook County at the present time. I know the defendant, Norton I. Kretske, one of the defendants in this case. Before I was judge of the court that I am now judge of, I was associate judge of the Municipal Court of Chicago for Eighteen years. I have known Mr. Kretske practically

all his life. He was born at Newberry and Maxwell, right in the vicinity of my uncle's drug store, who ran a drug store at Halsted and Maxwell for thirty years. I know his father. He is lawyer. As to the defendant Norton Kretske, on trial in this case, I became acquainted with neighbors and friends of his that were also neighbors and friends of mine and in that way I learned the general reputation he bore for being an honest lawabiding citizen prior to this trouble. It was good.

(Witness excused.)

SIDNEY BAKER, called as a witness on behalf of the defendant, Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

1060 My name is Sidney Baker. I live in Chicago. I am a lawyer since October, 1929. I know Mr. Glasser. I tried a case against him a few years ago. I know Mr. Alfred E. Roth. I was associated with him in practice of law.

Q. Now, did you ever have any cases in which Mr. Glasser and Mr. Roth participated?

A. I would say yes.

I was employed on one side of a case entitled United States of America vs. About 151 acres of Land in McHenry County, Illinois, a libel proceeding. I represented John Jursich and daughter Eleanor, who claimed they owned this farm. I believe the farm was seized in April, 1937 and case was tried in November, 1937 by Judge Barnes. Mr. Glasser represented the Government. The Government won. I consulted with my client, who wanted to know what his rights were. I told him the only relief he had was to appeal the case in the Upper Court, and that I did not handle appeals. He wanted to know whether I knew of any lawyer who specialized in appeals, especially Federal Court cases. Immediately to my knowledge there only came the name of Mr. Alfred Roth. I recommended Mr. Roth to Mr. Jursich. That is right, that I and Mr. Jursich engaged Mr. Roth to handle this appeal for Mr. Jursich. Mr. Roth handled that appeal in the Circuit Court of Appeals and the case was reversed.

Q. Who handled the case for the Government on the Circuit Court of Appeals, do you know?

A. I have been told that Mr. Lloyd and Mr. Collyer handled it for the Government; at least, I saw those names on the Government brief.

1061 *Cross-Examination by Mr. Ward.*

Q. You say Mr. Collyer and Mr. Lloyd. Just take a look at this and see if you overlooked any other names.

A. Michael L. Igoe and Daniel Glasser.

And it says Lloyd and Collyer of counsel. By reversed I mean it was sent back to be tried again.

Redirect Examination by Mr. Poust.

Q. I show you two pamphlets purporting to be copy of Appellant's and copy of Appellee's brief, numbered 180, 180-A and 181, and ask you if you know that those were the briefs that were filed in the Circuit Court of Appeals on behalf of the Government and on behalf of the land owner?

A. Yes, sir.

(Whereupon there was offered and received in evidence documents marked Nos. 180, 180-A and 181 on behalf of the defendant Roth.)

I believe this case was reversed in November, 1938.

Q. Has the Government yet put that case on trial again?

Mr. Ward: I object to that, Your Honor.

The Court: Objection sustained. We will try one lawsuit at a time.

(Witness excused.)

ANTHONY J. HORTON, one of the defendants herein, being first duly sworn, was called as a witness in his own behalf, and was examined and testified as follows:

Direct Examination by Mr. Stewart.

1062 My name is Anthony J. Horton. I live at 111 East 47th Street, Chicago, Illinois, with my wife. My occupation is a Bondsman—newspaper man. Prior to that I worked for the railroad for years as baggage man,

I worked as dining car waiter and worked in the Post Office three years. My line of work as dining car waiter was Santa Fe, L. & N., New York Central,—all of them. I spent about two or three years in that work. I was born in New Orleans.

Q. Now, I direct your attention first to the case referred to here as the Beisner farm case. Did you have anything to do with negotiating the bond in that case?

A. Yes, I did.

I got a call from Frank Hodorowicz on a Friday night, and he told me, he says, "There is two fellows coming down to see you. You know one of them. They want to see you about a case, and I want you to do what you can for them."

About 9:00 that night, a man by the name of Bill and Adam Milas came to my house and Adam says, "Tony",—I know Adam, I didn't know Bill; "We got a peculiar situation and we want you to help us out." I said, "What is it?" He said there was a man arrested by the name of Niess, and I want you to understand I got nothing to do with this still, but I sold the still to Vic and outfits, and they don't know how to run a still. I sent this Niess out to show them how and put it up, and Vic called me and told me now that Niess is arrested and what should he do. I told him "He is your man, you get him out." He says "I don't want that boy to stay in jail, he don't know Vic or that bunch, but he knows me, and I don't want him to stay in jail. I tell you what I think. I think Vic should pay for the bond, don't you?" I said, "That's true", and he said, "I will give you the money for the bond and we will get in touch with 1063 you about the other bond. If Victor pays you, don't let him know you got any money to pay this boy's bond, and if he doesn't pay you, we will get it some way". He says, "How much is the bond?" I said to wait, that I was not downtown and would call my partner. I called my partner and asked him to look it up and he said four fellows were arrested and the bonds were three thousand apiece.

So I told the fellows the premium was three hundred dollars and they asked me to shade it down, because they didn't have much money. Adam said, "I don't know what I got," but he gave me three hundred dollars and said, "If Vic pays for that bond, you keep fifty dollars for

yourself and turn two fifty back." I said, "O. K. that's fine."

That same night Vic called. I had known Vic since 1932 or '33. He said, "Tony, I got troubles." I said, "Yes, I heard about it." Vic said, "I want to get the boys out on bond. When can I see you?" I said, "You can see me now, I am home." Vic said, "Well, I have to get the boys together and we will see you tomorrow. Where can we meet you?" I said, "On the sixth floor of the Federal Building." "No," he said, "the boys will not come to the Federal Building. How about meeting me where I met you before?" I said, "That will be fine". That was the Insurance Grill.

The next morning I came down at 9:30 and met Victor Raubunas in the Insurance Exchange. He had with him this fellow Farber, who I didn't know, and Dewes, who I didn't know, either. I said, "Hello, what is in your mind?" He said, "Oh, we got a lot of trouble. They got four fellows arrested and I have to get them out." I said, "Yes!" The bond is three thousand apiece. That is \$1200.

Farber says: "Tony, I don't know you, but the reason we are here,—there are not four, I was one of the 1064 defendants." Vic said, "Would you make the bond cheaper, Tony?" I said, "You ought to know the price. What you got? And I will tell you about the bonds." Vic said, "I got three hundred dollars." Eddie Dewes said, "I ain't got a dime and I would just as soon be in jail. I don't give a damn about the fellow." Eddie Farber said, "I will bear myself out, I ain't got no money." I said, "You want three defendants out, don't you?" He said, "That is what we got you here for." Vic said, "I don't care anything about Widzes, and I don't care anything about Niess. Let Adam get him out, he is his man. I am interested in the farmer."

I said, "O. K. I will get in touch with Adam." In the meantime, see, I got that money in my pocket. I said, "Who is the lawyer? Have you got a lawyer to represent you?" "Yes," Farber said, "Abe Marovitz." I said, "You got two men to get out. Get Abe Marovitz to come in and reduce those bonds, or try to reduce them. Then you might have enough money to make the bonds."

Farber says, "Look, I can't get Abe to come in and do that. He is representing me for nothing, not a dime,

and to go and ask him to represent all of those, would be asking too much." I said, "Why not hire someone?" He said, "What do you think, we ain't got no bank roll, but Widzes has four hundred dollars and that will make four hundred on the bonds."

Farber leaned over and said, "Do you know Kretske?" I said, "Yes, he is a friend of mine." He said, "I think Kretske might help a man out and wait for the money. Do you know him well enough to talk to him?" I said, "Yes, I will take the boys over and ask him, but today is Saturday, a short day. I am going back in the afternoon." He said, "You go to Kretske's office and have him to come over and reduce those bonds, or 1065 send one of the boys over." I said, there would be no trouble in reducing them. I said, "I got three hundred dollars. What do you want me to do?" Raubunas said, "If you can get both of them out for three hundred dollars, do it; but if not, get the farmer out." I said, "You go and see Kretske, and when I get these men out, I will bring them to that office and you fellows wait there until I get there."

At that time Mr. Kretske was practicing as a lawyer over on Dearborn street.

Well, I came over with six hundred dollars in my pocket, three hundred dollars I got from Adam Molis and three hundred dollars from Victor Raubunas. I met Alderman Krohn and I said, "Hello, Chief", and he said, "Hello, Tony." I said, "What have you got?" He said, "I am trying to get a bond reduced for Widzes. He has got but one hundred dollars and Glasser don't want to cut it to one thousand dollars. I said, "Get him to cut it to two." I know the guys behind this still and they will make his bond."

He went over and talked to Widzes and went into Mr. Glasser's office and was in there for about fifteen or twenty minutes, and then went in the Commissioner's office.

I knew the bonds were cut to two thousand dollars. I got Niess out that morning, on Saturday morning, and got the farmer out. The bonds were two thousand dollars apiece. I said, "Today is their day. I can't get surety for the other fellow, but I will have him out the first thing Monday."

Q. Who are you talking about now?

A. The man that was left in jail, Widzes. I took these men over to Mr. Kretske's office and said, "Here is the farmer and here is Neiss. Widzes will be out Monday morning. Of course, I only used two hundred dollars of your money. There is another hundred dollars. 1066 Who will stand for my one hundred dollars?" He said, "Don't worry about your hundred dollars, that will be O. K.", and Farber said, "sure."

I said, "I will have him out Monday morning." Monday morning I made Widzes bond, so when I got him out, see, I said, "Look, Mr. Widzes, Mr. Raubunas said you had one hundred dollars in jail and I am one hundred dollars short." He said, he will make it good, so I let him go home. He said, "Don't worry about your money, I will see Vic and we will make it good," so he goes home. It was about 2:30 and I knew it was too late to get money out of the bank, so I did not expect to hear from Raubunas that day.

The next day I said to my wife, "Did Vic call me?" She said no. I called his house and asked his wife to have him call Tony. Well, Vic don't call me, so I call him the next day. I said to him, or his wife, who answered the phone, "Mrs. Raubunas, is Vic there?" She said, "He just went out." I said, "Tell him to call me or I will pick up those guys."

That night about 10:00 o'clock Vic called me and I said, "Where is my money? What is the trouble?" "Well," he said, "I let Widzes take care of that. I put in three hundred dollars and nobody else had a dime." I said, "Look, Vic, I expect you get me my money." He said, "Well, I will see him tomorrow morning and will meet you at the same place about 11:30 or something like that," so I said "O. K."

At 11:30 I went to the Grill and he and Widzes were there and they paid me my hundred dollars. That squared things up. I never heard from Raubunas directly for quite a while, but he did come to me on another still that was unmentioned here.

Q. Well now, all during your conversations about those bonds and your transactions, did you receive any money except what you told us you received and which was your premium?

1067 A. No, sir, that is every dime they had.

Q. Did you receive any money over which there was any conversation in which the word "fix" was used?

A. Impossible, ridiculous.

Q. Did you use that word in discussing in terms of your bonds and things.

A. You know, we have a common term around here. "O. K., I will take care of that. I will fix it up for you." We don't use "fix", in the line of bribing someone.

Q. Any time you used the word "fix", you were referring to your bonds?

A. There were a thousand things to do on the bond. That is taking care of it.

I never in my life gave Daniel Glasser any money. I been here ten years and never gave nobody any money. I never did in my life promise Mr. Glasser any money. I never got that good with him. I never did while Mr. Kretske was an Assistant District Attorney give him or promise him any money or anything of value.

Q. During these conversations with these various people that you were thrown in contact with, concerning bonds, did you ever take money from anybody or tell them that the money was for the purpose of fixing their case?

A. No, no, never.

Q. Now, I will direct your attention to another case that has been involved here. That is the case of Kwiatkowski. Tell the Court and Jury in your own way, what your connection, if any, was with that case.

A. Well, Kwiatkowski was referred to me by Frank Hodorowicz, who I have always considered a friend of mine, and he referred lots of business to me. He called me on the phone and said, "I have an old man coming down that was picked up yesterday, by the name of Walter Kwiatkowski." I just couldn't get that name, so he spelled 1068 it to me. He said, "You will know him, he is an old man about fifty-five or sixty years old. I want you to take him out on bond." I said, "Who is going to pay me?" Frank said, "Just bring him out and he will pay you."

I came down to the Commissioner's office that day, and in comes old man Kwiatkowski. I did not say one word to Kwiatkowski at the Commissioner's office, because I heard the judge ask him questions and he couldn't answer the questions. They asked him if he wanted to get a lawyer and he said "Yes". The case was continued and I bailed him out.

Q. When you bailed him out, did you already have your money for the premium?

A. I didn't have a dime out of him.

Q. You were willing to take Frank Hodorowicz' word that you would be paid?

A. I have took it for two thousand and I would take it for one bond. I got the man out and he and I took the street car and went out to the Hodorowicz store. I said, "Frank, here is your guy". Frank said, "All right, how much do we owe you?" I said the bond was twenty-five hundred dollars. He and I had an arrangement that I would knock off two per cent for him, as he could give that to the other fellow, whatever he wanted to do. I had that arrangement with Frank. He said, "Save him, he is O. K." I said, "I want two hundred dollars." He said, "You will have to take him to the police station to get your money, to South Chicago."

He also loaned me his car to drive Kwiatkowski over to the South Chicago Avenue station. When we got over there, Walter gets his money and he hadn't quite two 1069 hundred dollars,—just something around one hundred and eighty dollars in an envelope. I reach for the money, see, so Walter reached for the money and I said, "Frank told you to give me two hundred dollars." "Well," he said, "wait a minute. Two hundred dollars for what?" I said, "Two hundred dollars for the bond." He looked at me and I said, "Keep it and go back with me." Walter Kwiatkowski had a receipt from the police in order to get his watch and I think keys and his money. The police had taken that away at that he was arrested and gave him a receipt.

I took him back to the store and he still don't give me no money. So Frank says something to him in Polish and he turned the money over to me. I think there was around one hundred and eighty dollars there. Frank said, "I will have to get the other money", and I said, "Can't you go out and give it to me now?" He said, "Sure", so he goes and gives me fifteen dollars.

He said, "What is that lawyer you recommended for Pete?" I say, "Balaban?" He said, "Yes, that is him." "We got to get someone cheap to look out for this old man."

He said, "Take him down,—or Monday I will send him down and you take him over." I said, "Look, I don't mind that the lawyer won't be able to get anything out of it, but you go with him and explain to him in Polish." I would have done it, see, but he couldn't understand. He

gave me the two hundred dollars and I left the hardware store.

The next week I am told,—I don't know, see, but they went over to hire Mr. Balaban. The next time I saw Walter was when the hearing came on and Mr. Balaban represented him, and I was there and sat there until he was discharged.

1070 The only money transaction that old man and I had was the premium he paid me for that twenty five hundred dollar bond I made for him. There was no money paid to me in that case by anybody for any purpose. Never was discussion about it until later. Later on Kwiatkowski came back to me with a man that he represented to be his nephew. I can't say how long that was after Kwiatkowski was discharged, but it was quite a while, five or six months.

I was on the eighth floor of this building, and this man came up and asked, "Who is Tony?" I said, "I am Tony." He said, "Do you know this gentleman?" I said, "Yes, I know him, that is Mr. Some kind of a name, but I can't remember."

So he says, "This is my uncle, this is Mr. Kwiatkowski." I said, "Yes, how are you?" He said, "My uncle has been indicted again, see? What are you going to do about it?" I said, "What am I going to do about it? What do you mean?" He said, "Now look, this old man was discharged, and he has no business to be brought back." I said, "Who am I to say? I make his bond before, now I will make his bond again." "No," he says, "he ain't got no money." I am interested in the case, see, and I said, "Go and see his lawyer." He said, "Who was his lawyer?" I said, "Oh, he knows, but I will tell you." So I tell him and give him the address, and I said, "Go and see his lawyer." He said, "All right, thanks", and left. In about an hour and fifteen minutes, this man came back alone.

Q. The fellow that called himself his nephew?

A. I thought he was, see? He spoke Polish to him, but he came back alone and says, "Say, you better get that six hundred dollars you took from that old man. He is going to squawk about it." I said, "I never took any six hundred dollars from him." He said, "Why, he said so."

1071 I said—excuse me, but sometimes my language isn't fit for ladies. I said, "That isn't true. I don't believe he said that. Why didn't you tell me that when you had the old man up here?" He said, "Well, I will

bring him back." I said, "I will be here, bring him back." He said, "I will bring him here tomorrow morning at 10:00 o'clock." I said, "Fine, I will wait for you."

Well, they did not show up, so I figured it was a joke. The next day about 11:30 here came him and the old man, see? He said, "Now, you ought to get together." I said, "I ain't got nothing to get together about. You told me I took six hundred dollars from the old man. There he is, let him say that I took six hundred dollars from him." He said, "Walter, is this the man that took your money?" Walter looked at him and didn't answer. I said, "Let the man answer. Don't try to force him to say that I took six hundred dollars from him." He said, "Walter, is this the man?" Walter said, "I give you two hundred dollars." He said, "I know you gave him two hundred dollars, but didn't you give him six hundred dollars to take care of the case?"

I say, "Go ahead, Walter, tell him." He said, "No, I give him two hundred dollars." He said, "You know what you did? I came here yesterday and accused this man of taking your money. I owe him an apology. Now, tell me, did you give this man your six hundred dollars?" Or something like that. Walter say, "No, not him," so the man shook my hand and says, "Mister, I am sorry, but that old man really told me that, but I see you did not get the money." I said, "Oh, forget it. I did not think the old man would say that."

1072 Q. Did you later find out that that man who said he was the nephew, was in fact a Government Agent?

A. To be truthful, I could not say today if he was Government agent, but I was told he was. I saw him in the District Attorney's office about two weeks ago. He told me he was from Detroit and I thought the Government would clear me of this money, because Mr. Bailey said he would. I don't like it. Don't think for a minute that I like it a bit, see?

Q. Now, I want to direct your attention to Peter Svec. Did you make bonds for him?

A. I made one bond for Peter Svec. That was sort of an accident. There were three defendants in the case, and the people behind that outfit made Surety Company bond and Peter Svec—I never made bond for him until that time, and the Surety Company would not take him on bond, because he was out on an appeal bond. I made one bond for Peter Svec. That is the bond he made when the agent

arrested him as he was going past the still. He was discharged on this hearing.

Q. Did you ever get any money from Peter Svec except for premiums?

A. I never got a dime for premium, either. The other people paid for the bond.

I did not ever take any money in that case, where I represented it was for any illegal purpose. He did not contend that. I did not. Kwiatkowski did give me an explanation about why he told the man he called his nephew, a lie about this six hundred dollars.

I got in touch with Frank one night, and I said, "There is something shady about this old man's proposition here. You are the one man knows I did not take any money from him." He said, "The old man will not say that, forget it."

I said, "He already said it. He told a man that I hear 1073 is an agent, he did not point me out in front of the man; but there is something fishy about the thing." He said, "Well, meet the old man here tonight at Tony's across the street and talk to him."

So I went over to Tony's, his brother's place, and in came Kwiatkowski. I said, "Wait, Walter, why did you bring that man to me the other day? He had a time getting out of you about the six hundred dollars. Did I ever take six hundred dollars from you for anything?" He said, "No." He said, "That was not my nephew, that was a policeman." I say, "A city policeman?" He said he didn't know, that he is a policeman. I said, "You must have told him that I got the money." "Well," he said, "they told me I am going to get five years if I don't say it is you." I say, "How come you pick me? Did you pay anything to get this thing straightened out?" He said, "It cost me six hundred dollars." I said to him, "Why don't you tell who you gave it to?" He say, "Well, I know, I don't remember. It cost me six hundred dollars."

I said to him, "Don't you give me any trouble, I don't want that stuff on me, see?" So there was a little talk pro and con. I don't remember all that was said, but that was the substance of it. When I refer to Frank and Tony, I am referring to the Hodorowicz brothers. I have never been out to that Hodorowicz Hardware store in my life with Norton Kretske. I remember a man by the name of Stephen Ostrowski. I received a telephone call from him concerning bonds.

There was a call left at my house to call Steve Ostrowski.

I did not know Steve Ostrowski. That was when I came home in the evening. I had cards made with the name of my bond company on that I represented, and I used to drop them cards out rather freely. Well, he called and said he left a call and said to me, "I want to see you on business," and I said, "O. K., right after supper."

1074 So I got in my car and I drive to 119th Street, which was a real estate office or contracting office. This man was doing decorating when I got there. He said, "Are you Horton?" I said, "Yes, I am. Did you call my house?" He said, "Yes, but I called for another man. Are you in a hurry? I will get in touch with him for you." I said, "All right," and he told me to sit down. I then sat down and he called on the phone and in about half an hour came Patsy Rocco. He introduced us as "Rocco, this is Horton. He is the bondsman. You can have my office and talk," just Patsy and I, see?

Patsy tells me this is his story: "Look, I think we are going to have some trouble. Did you read about that still that blew up." I said, "Yes, I read about the still that blew up, I get the newspaper for those things." He said, "They have not arrested anybody yet, but there is a man that lives in the house, by the name of John Paretti. His wife is pregnant. The police came there, the agents, and they left word with the woman that when her husband came home, to have him lay off and come down to talk to them." This is Patsy telling me what went on. He says, "I don't want this man to be held down there without bail. I want to get him out right away. He is an ex-fighter and a friend of mine." He said, "I want you not to leave him stay in jail. What is the procedure; how do they do things?"

I said, "If he lived in that house, they will take him to the Alcohol Tax Department and then they will bring him to the Marshal's office and arraign him before the Commissioner. I will be in the Commissioner's office, so give me his name and address and tell me what he looks like, and I will bail him out."

1075 He said, "Fine." Of course, we all may be in about this thing, because this guy that stayed with us, this Murphy—that is Paretti, somebody told him when we were disconnecting that place, we ran out and left his wife and she was pregnant. My partner has gone over to try to square things with him.

I said, "How come the place blew up?" He said, "We

got a tip to move the place, somebody had wrote a letter about the place and we got a tip to get it out. We was stealing gas, and in breaking the gas tip, the thing got caught on fire and they jumped out and didn't get the lady."

I said, "If you don't square that guy, they will have you all in jail." Then he say, "You fellows own that jail." I said to him, "You won't need a bond for him, you will need one yourselves." He said, "I think we will be able to square this fellow." I told him,—he told me first, "I tell you what to do, you get on the lookout and if they bring him in, what do bonds run?" I said fifteen hundred dollars or two thousand dollars.

Ostrowski then said, "Don't bring this guy in here. Take him around the saloon." He said, "All right." He said, "I will give you the phone number and you can call me at this number and let me know what the bond is. There will be no question about the money, only get him out."

I got that number and came down the next day and waited for the man, and he did not show up. I asked the clerk, "Are they going to bring somebody from the Alcohol Tax Department," and he said no. I stayed around there until about five o'clock that evening. Then I called this number and got Patsy and I say to him, "They did not bring that fellow in." Patsy said, "He went downtown and has to go back tomorrow. They are not through questioning him." I said, "Well, I will stick around," 1076 and the next day I came down and stayed until the place closed, and no Paretti. That evening I took a roll out south to see Patsy in person, and said, "Has that fellow been down yet?"

At the second conversation Swede and Patsy were present. In the saloon. I said, "That fellow did not show up. Did he go down again?" "Yes," he says, "and he gave a statement to the agents. He said some agents questioned him a lot and he promised to help them find the owners of the still and a lot of blah, blah.

I said to Patsy, "That guy must be snitching, must be stooling, or they would lock him up." Patsy said, "Well, what the heck, we will just have to make bond. I don't think he is that kind of guy." I say, "When I see him coming I will know him and I will know you, and you can introduce this man. You fellows can tell about it if he comes. I got his name and will take him up."

Well, I came back downtown, and for about a week, I never heard a word about the case. I think it was on Saturday afternoon, I drove out to see Patsy Rocco. I said, "Say, Patsy, those fellows didn't come in. I have been hanging around there until 5:00 o'clock at night. What happened?" He said, "Nothing happened, the agents have been around with that Murphy, trying to find the others." I said, "Aint you going to take care of me? I need some dough. I have been overstaying my time down there."

Q. Up to this time, had you received any money?

A. Not a nickel. Patsy say to me, "Jesus Christ, don't talk money to me. This thing has cost me a thousand dollars." I say, "For what?" Patsy said, "I have to give them people some money and represent the place and make settlement with the gas company. Don't ask me about money, I am nuts. I will take care of you." So I said, "All right, forget it."

We had a conversation in general, I think I ordered something to eat. They paid for it, it was their place.

There was nothing ever discussed about no Mr. Joppek. I never knew him until Mr. Bailey asked me about Mr. Joppek. I say, "I don't know no Mr. Joppek." Nothing was discussed with me about Joppek. I found all about Joppek in the last month since I was indicted.

Q. All during your talk with Swede and Patsy, did you at any time tell them you could fix any case?

A. It never was discussed, Mr. Scott, honest to God.

Q. Did you at any time take any money for that purpose?

A. No, sir, not a dime.

I have been around here in the bond business about eight years actually. In my line of work I became acquainted with all of the Assistant District Attorneys and all the lawyers and all of the judges.

(The witness was withdrawn.)

JOSEPH A. GRABER, called as a witness on behalf of the defendant, Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Joseph A. Graber. I reside at 8201 South Elizabeth Street, Chicago. I have been at the Bar about 34 years. I do hold an office of trust and honor here in the community. That office is Judge of the Superior Court of Cook County. I know the defendant, Norton I. Kretske. I have known him about seven years. I know his father about ten years.

1078 In my acquaintanceship with the defendant, Norton I. Kretske, I did also become acquainted and have among my friends, friends of his. In that way I learned the general reputation he did bear in the community. Prior to this trouble, for being an honest and lawabiding citizen. It is good.

(Witness excused.)

HARVEY M. ADAMS, called as a witness on behalf of the defendant, Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Harvey M. Adams. I reside at Arlington Heights, Illinois. I am a lawyer. I am acquainted with the defendant, Alfred E. Roth. I recall the case of United States *vs.* Dewes, Duthorn and others, in which Mr. Roth represented Mr. Dewes. I represented one of the defendants, Leo Duthorn, in the United States District Court. That case was tried in the District Court here before Judge Wilkerson. I collaborated with Mr. Roth in the preparation of that case for trial in June 1939.

Q. Just go on in your own way, and tell what you did and what Mr. Roth did.

A. I came into the case the latter part of May, 1939, on behalf of the defendant, Leo Duthorn.

As I recall it, the case had been set for trial for May 22d. I was retained by Duthorn two or three days prior to that date.

I made an investigation of the records in the District Court. I appeared before Judge Wilkerson on 1979 May 22d, and entered my appearance in the case in his behalf, and at that time I stated to the Judge my position in the matter, as being unprepared for trial, due to the fact I had not had sufficient time to prepare for trial, and asked for a continuance. One of the attorneys representing one of the other parties in the case was sick.

Daniel Anderson was the attorney who was ill. If my recollection serves me correctly he represented the defendant, Victor Raubunas. At that time on our motion, Judge Wilkerson continued the case and re-set it for trial for June 13th. On leaving the court room, I spoke to some of the other counsel in the case, and suggested that, in my opinion, we should have a conference in regard to the matter, and our respective clients' representation. At that time, no time was fixed for the conference. We did afterwards hold a conference. It was held on June 16, 1939 in the office of Mr. Roth at 10 North Clark Street in this city. Mr. Roth was present. He represented Dewes. Mr. George Cohen was present. If my recollection is correct, he represented Adam Widzes, I believe the name was, one of the defendants. I cannot recall the name of the other gentleman. He was from Mr. Anderson's office.

Q. Was the name Arkema, from Mr. Anderson's office?

A. I cannot recall the name, he was a young man.

He was there on behalf of Raubunas. Raubunas was present. Dutborn was present and Beisner was present. I don't recall who was his lawyer. I believe it was Mr. Kretske. I know Mr. Kretske. That is right, he was present, representing one defendant by the name of Beisner, supposed to be the owner of this farm where the still was located. According to the best of my recollection, all of the defendants excepting one or possibly two, were present. All counsel were there. We were preparing for trial. The conference lasted approximately an hour and a half; possibly a little longer than that, two hours, possibly.

Q. Did Raubunas or Dewes or any of the men present there, who were defendants in that case, say anything about paying money for a fix?

A. No.

Q. Was the preparation that was made there on that day, with the idea of fighting the case on its merits?

A. Yes, sir.

Cross-Examination by Mr. Ward.

The date of that conference was June 16, 1939. I do recall that you prosecuted that case. It is not right that my client was discharged at the close of the Government's evidence. He was discharged before the close of the Governments Case on my motion.

Q. You don't recall the name of Mr. Widze's lawyer at all, being at that conference?

A. Mr. Cohen, as I recall.

Q. You know Mr. Cohen did not represent him before Judge Wilkerson, don't you?

A. George Cohen represented one of the defendants. I was under the impression it was Adam Widzes.

Q. But you may be mistaken?

A. I may be mistaken.

(Witness Excused.)

1081 ANTHONY J. HORTON, one of the defendants herein, having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination by Mr. McGreal.

I am thirty-five years old, will be thirty-six in June. I have been in this building about eight years. I arrived here just about 1932. I don't know what time of the year I got here. I don't know what time of the year it was. Prior to coming here I had a cafe and club in Cleveland. Oh, I think I got in it in 1929, right before the crash. I was in it about three years. My cafe in Cleveland was at 49th and Central, the Apex. I owned that place. I had about twenty-one employees. Prior to going into that business I was down South hopping bells, waiting in hotels. I had just come from down South. I came from New Orleans in 1927 and stayed until 1928. Then I went to Cleveland and opened up this cafe in 1926. I was down in New Orleans in 1927 and then came to Chicago. I remained in Chicago not so long. I made a couple of trips to California on the Santa Fe and then pulled up. I was working on the railroad all the time. I was a waiter. That was in 1927. I have been in business for myself since I have been here. When I came to Chicago from Cleve-

land about 1932. I have not worked for anybody. I always worked for myself except a short time on the State payroll. I met Mr. Kretske when he was District Attorney. He was in the Bond department. I could not say exactly what year that was.

Q. When did you first meet Mr. Glasser?

A. Well, when you say "meet," you puzzle me.

1082 Q. Oh, I don't puzzle you, Tony. You know what "meet" means, don't you?

A. I did not meet Mr. Glasser to talk to him until he was here probably six months.

I don't know when I met him. I don't know when he arrived here. I was not joking with you, Mr. McGreal. His office was upstairs in the rear of the hall on the eighth floor. At the time I am speaking of Mr. Kretske had a private office and Mr. Glasser had an office by himself.

Q. Later on, who occupied that office with him?

A. Mr. Glasser and Mr. Kretske had an office together in the rear. I saw them every day I was here. I got down in the morning 9:30 or sometimes 10:00 o'clock. Generally I left the building about 3:30 or 4:00 unless I had business with someone. I don't have an office in this building. I am all over. If there is some interesting case and there is nothing before the Commissioner, maybe I am in the court room, maybe I am in the Commissioner's office.

I do spend considerable time quite often in the hallway outside the Commissioner's office on the eighth floor. I know where that tavern is in the Insurance Exchange Building. I have been there. The first time I went there was in,—I won't attempt to tell the year. It was when I took Boguch and Lincoln Rankin out. I mean Ralph Boguch and Lincoln Rankin. I took them out of the jug, the jail. They were charged with some kind of whiskey case, still case. I am pretty sure, from what I have heard here that that was the Western Avenue case. I posted their bond. I did receive a premium or payment for that. I will tell you who paid me. Mr. Kaplan actually paid

me. I mean Louis Kaplan, one of the defendants
1083 here. After I took Boguch out,—wait, I am mixed up. The first bond Raubunas paid me. Raubunas introduced me to Mr. Kaplar. I took Boguch out again at a later date. Raubunas was not there. Raubunas paid for the first bond. I think I got \$350.00 or \$400.00

for the two bonds. I think the amount of the bond was \$2500.00. Victor Raubunas was the first to communicate to me in reference to that bond. He communicated with me at home. I would not attempt to say what time of day or night it was, generally after 5:00 o'clock. I took Boguch and Rankin out on bonds the next day. Off-hand I don't know who was the surety on that bond. I do not know Louis Pregonzer. I do not know Joe Cole. I met these men out in the hall last week.

Q. You were over in the Insurance Exchange Building that morning. Who were present.

A. I don't think it was that morning. It was afternoon, some time after the wagon goes in. Kaplan and Raubunas were there.

Well, what happened, Kaplan was there when I brought the prisoners and Raubunas had not come with the balance of the money. Boguch and Rankin were the prisoners. I brought them to the Insurance Exchange Building. I told them I got the check. Kaplan was there and Raubunas came later. Nothing out of the ordinary was said at that time. I say, "Here is the men." and they start counting out the money at the end of the bar. I think I bought a drink and left them there. The next time I went to the Insurance Exchange was when Boguch was arrested. Boguch and Rankin was arrested on this first time. The next time was the removal, extradition. I judge it was Mr. Drymalski that was handling that removal case. Boguch was not removed. I undoubtedly was in the court room when they had a hearing.

Mr. Drymalski represented the Government. I think Mr. Max Weisbrod represented Boguch.

Q. Was Kaplan there?

A. No, I could not get them guys near the building.

Q. What was that?

A. I could not get them near the Federal Building.

Q. You couldn't get them near the Federal Building, is that right, Tony?

A. Not on a bet.

They did not like to come over here. I saw Kaplan in here once. I brought him in that day. I commenced to see Raubunas in the building quite regularly after he was indicted. I saw Dewes in the building whenever Raubunas came up, Dewes was along. Prior to that time, I did not see them around this building.

Q. Going back to the Insurance Exchange, when Farber was there, was this the third time?

A. Yes.

Raubunas and this man Dewes was there, three of them. We sat in the booth. Well, Raubunas had to introduce me to Farber and Dewes. I didn't know either of them. Farber, it seemed, done most of the talking. I was the first man to open up, as far as conversation was concerned. I told him, I say, "How many men you want to get out?" He said, "Four of them." I said, "Yes; the bond is three thousand dollars. That is twelve thousand dollars. That is twelve thousand dollars." "No," he said, "I am one of the defendants, I got out last night." I said, "You got three men in." "Well," he said, "I am not interested in three, just two." He mentioned the names of the men. They were Niess, Widzes and the farmer, Beisner. There was something said about 1085 getting out the farmer. Raubunas said, after we talked about money, they let me know they were not interested in Neiss. I am getting to what was said about the farmer. After the money was so short, Raubunas said, "I am not interested in nobody but the farmer. Widzes is part owner. He can stay in jail until we get the money, but I want the farmer out today." He said the farmer knew him. It was one of those general conversations.

Q. Do you always get twelve hundred dollars for that amount of bond?

A. Well you ask for twelve, but you take what you get, see?

In this case I got seven hundred dollars. My wife has some books in connection with my business. I do not have them with me. I kept no record of that transaction, but I know it.

Q. Now, as a matter of fact, Mr. Horton, is it not true that at that time and place, you said for twelve hundred dollars you could take care of the case?

A. That was not even discussed. Was I going to discuss the case with these men?

Q. There was nothing wrong about taking care of the case, was there?

A. Positively not.

I did not use the word fix, that is true, I did not. I know Christ Del Rocco. I know Swede Swanson. I met Del Rocco first at Ostrowski's place. I drove out there.

Somebody called me up first and I went out there then. I did know that the still had exploded at 119th street, but I didn't know that was what I was being called for. I think I did know on the way out that had exploded, there was a headline in the paper.

1086 Q. You were interested in stills around this district, weren't you?

A. I still am.

I know the people behind these stills, and still do. I knew who was behind most of them. I did not know who was in that still.

Q. But you knew who was behind the others?

A. What do you mean?

Q. You said you were interested in stills in this district.

A. Yes, but the only way you know who is behind them, is if they tell you.

I did not know at that time who was behind that still. I did not know Christ Del Rocco at that time. I did not know Swede Swanson at that time. I never knew Vic Joppek.

Q. How much money did they give you in that tavern?

A. Not a dime, not a dime. What is your reason for that?

Q. I have no reasons, Tony. You give your reasons. How much did they give you?

A. Not a dime.

I had no conversation with them at that time. I had a conversation with Patsy. I did not tell Patsy I could take care of that violation he was connected with for five hundred dollars, five hundred dollars was never discussed. He did not give me five hundred dollars. I just met them. They going to give me five hundred dollars? That did not happen.

I do know Frank Hodorowicz. Patsy Del Rocco and Swede Swanson were not connected with Frank Hodorowicz at that time, but later on, after they killed Joppek, they got together.

1087 Q. How did you find out they killed Joppek?

A. I find it out.

The Court: What evidence have you that they killed Joppek? If you have, you had better report it to the proper authorities.

A. I got my information pretty straight.

The Court: You had better give it to the proper authorities, if you have any.

A. I will be glad to do that.

Mr. McGreal: Q. Didn't Christ at that time tell you that five hundred dollars was a little too high?

A. There never was any discussion with Rocco and me about five hundred dollars, never.

There was no amount mentioned, nothing to do at that time. I remained out there about twenty-five or thirty minutes. Mr. Ostrowski called and requested that I come out. Swanson did not show up at all that day. The next meeting was three days after that, or four, in the tavern right around the corner. It must be on 119th street. I had a further conversation at that time. The explosion of the still at 119th Street was not discussed,—the idea of the man not being brought in our district. Joppek I never knew to be interested. I don't know Joppek. I can't say that I was in the building when Joppek was brought in by Agent Goddard of the Alcohol Tax Unit, I can't say I was not. I never knew the man. I never did discuss Joppek with Mr. Glasser or Mr. Kretske.

Q. Did you ever see Joppek in this building?

A. I don't know the man, Mr. McGreal.

I have seen Swede Swanson or Christ Del Rocco in this building.

1088 Q. Did you have any other meetings with Swanson and Del Rocco?

A. My next meeting was not with Del Rocco at all. It was with Swanson. He was wanted in Cleveland, and I met Swanson.

I had a conversation with him.

Q. At that time, did you mention the five hundred dollars?

A. No reason for it. I never talked five hundred dollars to these men. I talk two hundred and fifty dollars.

Q. Remember that Sunday morning at Frank Hodorowicz' hardware store?

A. I can say truthfully, I never was at or out in that part of town on Sunday.

I never was in Frank Hodorowicz' Hardware store on Sunday. I am out there on an average of once or twice a month.

Q. About the time that the Stony Island avenue still was raided did you go out there after that?

A. That is the still over on 69th Street? I was out there.

I have never taken any one with me but my wife. I could not say off-hand who was there when I got there, other than the home folks there. I don't think Christ Del Rocco was there. Generally Frank is there. I never was there with Mr. Kretske at no meeting with Del Rocco and Swanson. I don't think I made the bonds in connection with the Stony Island Avenue still. I think they made their own bonds. I know I was not out there that morning. I never had any discussion in my presence about twelve hundred dollars. I was not there the afternoon the five

hundred dollars was paid on account. I did go over 1089 to Mr. Kretske's law office. It was at 7 South Dearborn Street. I would go there just as often as I had business. I could not fix any definite day or time. There has been two months elapsed and there have been at least four times one week. I could not say how many cases I handled with Mr. Kretske. I couldn't say how many. I made most of his bonds that wanted Professional bonds.

Q. Do you remember the names of the defendants?

A. If you call any of them, I can tell.

Q. You call them, you know them.

A. I can't do it offhand.

I made a bond on Netko-Buchanek. The bond was either one thousand or two in that case, something like that. It was finally a cash bond. If I am not mistaken, six thousand dollars was the total amount of cash put up as bond. That was not my money. I borrowed it from Mr. Balaban.

Q. Did you post any collateral when you posted that six thousand dollars?

A. I have security on money.

That bond was forfeited. There was a motion made to vacate the forfeiture. I couldn't say who made that motion.

Examination by the Court.

I don't know, Judge, what attorney made that motion. There was three motions made. Some lawyer made a motion and Mr. Ward went downstairs and vacated it. I don't know who was the lawyer. Somebody told me Mr. Ward went downstairs and vacated the motion. I found out the next morning that the bonds were forfeited again. And the lawyer came in. If I am not mistaken, I think Mr. Hess got the bonds vacated.

Mr. McGreal Continues Cross-Examination.

I know a man by the name of Passman. He is a lawyer.

He is associated with Mr. Kretske. He made one 1090 of the motions not at my request.

Q. In your eight years' experience in this building how many transactions have you had that six thousand dollars cash was put up in bonds?

A. Oh, probably three or four. I had some with twenty thousand dollars.

I remember all about this one. I did not call Mr. Passman at Mr. Kretske's office and ask him to make a motion to vacate the forfeiture. When the men did not show up that morning, I called the lawyer and the men, and the men were home. They thought they were due at two o'clock. I called Mr. Kretske's office. He was not there and I talked to Mr. Passman. He said the case is on at 2:00 o'clock and I said, "No, the judge forfeited the bonds this morning."

It was long before the posting of the six thousand dollar cash and bonds, that I received that money from Mr. Balaban. Nothing like a week. Not a day. When I got the bonds and my security lined up, I offered him the proposition to let me have the money and put it up right away. I offered him a good deal. I had a clear building, and I took a mortgage on the building. The building is worth about seventy-five hundred dollars. I took a clear mortgage on the building, and told him what I had to protect me on the bonds. I said, "There is a man in the case, an ex-brewery vendor. You know David, don't you?" He said—That is Herman David. He was one of the defendants in this case. He said, "I will let you have that money." So I always submitted whatever property I had to see if I had it tied up proper. So then he gave me the money. He made me sign a note and I got the money at five per cent. The money was to be returned to him at the disposition of this case. I communicated with Mr. Balaban when the bond was forfeited.

1091 Q. And did you also communicate with Mr. Passman of Mr. Kretske's office?

A. With everybody.

The forfeiture was vacated. The Judge let the defendant out on the bond. I never did take the money out. The Judge just reinstated the bond.

I have known Frank Hodorowicz ever since I first came to Chicago. I have been trying to wrack my brain the last two weeks, where I first met him. I really don't remember where I first met him. I think I made a bond for a fellow and he took me to Frank to get the money. That was way back. I am pretty sure the name was Spino. I can't remember what case that was, it was some kind of alcohol case. I did not make bonds on Pete Hodorowicz and Walter Hort.

Q. Remember when they were arrested in January of 1937?

A. Is that on the Indiana case?

Q. No. How about that Indiana case? Do you remember that?

A. Yes, sir.

I do remember the Indiana case. Frank called me and told me his brother and employee were arrested by agents and taken to Hammond. I asked him what he wanted me to do and he said, "It is out of town and the bond is ten thousand dollars," "That I could call for two bonds at ten thousand dollars apiece. I told him the company didn't make any bonds over five thousand dollars unless the money was put up in cash. He said, "That is a pretty big bond." I said, "We ought to try to get a lawyer to go in court and cut them, or try to cut them." He said, "Well, get somebody and I will hire them."

I contacted Captain Boddie, I asked Captain Boddie, "Do you know Judge Slick?" He said, "Yes, I know 1092 him." I said, "We want somebody to try to cut some bonds, and would like somebody that knows the judge, that he might do better." Captain said, "I will take that," so I took him out to Frank's store and picked up his wife and went. I asked Captain Boddie if he knew Judge Slick. Yes, I figured it would do some good if he knew the Judge. It really would be ridiculous to expect me to fix the case. It wasn't necessary to reduce the bond. When we got there, we were late getting there, and the Commissioner's office was closed and the agents informed us the case was on call the next morning. We came back to Chicago and figured we would take care of the situation the next morning. The men were discharged the next morning for lack of jurisdiction at Hammond. I saw the men in this building after that. They had an agreement that morning that when the complaint was taken out later these men would be surrendered. They were either picked

up or surrendered. I saw them after that in this building. I think I was present before the commissioner. The defendants were Walter Hort and Peter Hodorowicz. I think I was present when they were held over. I did not have any conversation with Frank Hodorowicz the morning they were brought in here. I did not have any conversation with Frank Hodorowicz in Mr. Kretske's office about the case. I never talked to Frank about it. I know Adam Widzes and Peter Hodorowicz and Christ Del Rocco. I know them. And Tony Hodorowicz, Mike Hodorowicz, I know all of them.

Q. Did you ever see any of them in Mr. Kretske's office?

A. Well, you got them all mixed up.

I don't think I ever saw any of them in Mr. Kretske's office. I know Frank ever since I first came to 1693 Chicago. We were good friends—still are. I don't think we went to night clubs together,—to taverns, around. We never took anybody with us. We just stopped at the corner and went around those places. Just me and Frank. Mr. Kretske was never with us. I never went with Mr. Kretske. I am pretty sure it was in his store where I first met Frank, but wouldn't swear to it. Mike was a later acquaintance of mine. He was in Texas in 1933 and came here in 1934 or 1935. I met him then. If I am not mistaken, I first met Tony about the same time as Frank. No, I met Pete the same time as Frank. I think Pete was with Frank the first time I met him. I am sure it was in his store. We always had conversations. Pete was not arrested at that time under any charge. At that time I didn't see about any bond for Pete, Frank, or Mike or Tony. I had no business out there. That is right I just went out to visit them. Frank's Hardware Store is just an ordinary store, it takes up the front of the house and in the back is the apartment. A counter, a case on the side and everything. I never had any meetings at Franks. There was no necessity for meetings. I wouldn't say there would be a gathering out there. Well, I have been out there with, I dare say, with numerous people. Every time I go, different people. I was out there and met Stanley Slesur, the man that testified in this case. I met a lot of big bootleggers who were never arrested, I met a few Government agents out there and have met a few out of town bootleggers. I also met a few working men and met a few politicians.

I never had a meeting there, but I have seen Patsy around the store. I did not see him there with Swanson; there was no conference.

Q. You were there and saw them there that morning when they talked about the twelve hundred dollars?

1094 A. I was not there.

I know Peter Svec. At one time I was surety on Svec's bond. That was the last case he had in this building after he was convicted, where Zarrattini and Nich were co-defendants.

Q. They were arrested at 713 North Wells Street?

A. I never knew where they arrested them. I presume you are right.

I was never on any other bond on them. That is the only bond I made for Svec. There was a man, there were two men that came to my house, a man named Meyers, and I forget the other fellow's name. I would know him if you had a picture of him. I would identify him. They paid me for the bond in my home.

I know a man named Yarrio. I have known Yarrio back about four or five years. If I am not mistaken, I met him right in this building on the eighth floor in the Halls. He used to come and bail men out, bailed men out here, but I never done any business with him. He didn't do any business with me. I didn't do any business with Yarrio. We all called him Sheenie. I saw him around the eighth floor about twice in the courts. I would not know when that was. Well, let me see, I do not want to be wrong about that. I just can't say but I have not seen him often. I have not been to his place or shop at 1062 Polk Street. I have never been out there. That is a mistake. I have never been out there. I have never been in that place. I drive a Lincoln Zephyr. Yes, I took Paul out there. Do you want to get that? I took Paul Svec out there. I first met Paul Svec that day he was arrested. He was locked up. I knew him before that. That was the case of December that you referred to. I took him out on bond. Nobody was with me, just he and I. We
1095 left here together, I took him out on one of them streets over there in that neighborhood.

Q. You drove to 1062 Polk Street?

A. I did not drive to any special number, but it was in that block somewhere. He got out.

I was not paid for that bond at that time. I was paid at home the night before. Mr. Meyers paid me. Sheenie

did not pay for that bond. Sheenie was not with Mr. Meyers when he paid me. There was another fellow there, I think they called him Ely. I did not meet anybody at 1062 Polk Street. I just dropped this man off. I just took him home as a matter of courtesy. There was no one with me. There honestly wasn't anybody with me. I heard Svec testify. I think he made a mistake. I know he did. I heard him say, "Kretske was with me." Why should I deny that Kretske was with me? I didn't understand him to say we met Yarrío, because I didn't. I didn't understand that. I heard him testify, I heard him say I took him home. We picked up Kretske and took him out. I patted him on the back, and said, "Everything will be all right." I heard him testify to that. Yes, he really is mistaken. That was not the first time I met Paul Svec. I knew Paul Svec at least two years before that. I met him right here in this building. He must have been charged with a crime then, because he was getting on bond. He was getting out. I did not get him out on bond. I never talked with him about a bond at that time.

Q. Did you see Meyers or Sheenie Albert at that time when you talked to Svec about a bond?

A. You say see Sheenie Albert and Meyers about the bonds?

Q. Meyers and Sheenie Albert about the bond?

A. Different people altogether.

I did business with Meyers. I never did get any business from Sheenie Albert. I always thought until this last year that Svec was one of Sheenie Yarrío's boys. 1096 It seemed like he pulled away. Until this last case,

I made the bond in this last case and Meyers paid for it. I am pretty sure I appeared at the hearing that day when Svec was tried before the Commissioner. I think it was Mr. Roth who represented Svec before the Commissioner, not the first time, but the second time. There were two other defendants in that case. I did not make the bonds for them. One of them was Bernstein and one was Naples. Mr. Hess represented Bernstein and Naples. I think they waived examination. I am not sure about that. Svec was discharged. They had the hearing but both waived examination, I think, and the Judge discharged Svec.

I don't believe I ever saw Svec after that until he was brought in. I saw him the day he was surrendered. There was some question about getting him in on that bond.

I did not like it. And he was late in getting in. I saw him come in in the afternoon. We thought he had left the jurisdiction.

Q. Going back to Frank Hodorowicz's place there, did you ever at any time in your life hear any conversation in Frank Hodorowicz's store about money?

A. Yes, sir. I collected most of my premiums for all those fellows out there in that store.

Q. You have collected from Frank?

A. I have borrowed a lot of money from him, not a lot, I have borrowed twenty-five, fifty.

Frank paid me. I very seldom had any financial dealings with the individuals who were arrested.

Q. You never made a bond for Joppek?

A. I never did know that man, Mr. McGreal. I never knew him.

I made a bond for Swanson. I think Swanson paid 1097 me himself. I never made a bond for Christ Del

Rocco. Frank always paid me when the Hodorowicz boys would be arrested and I would make the bond.

Q. When any one of his men were involved, is that correct?

A. No, not necessarily so. There is a lot of those cases out there. You see, I had an agreement with Frank, a working agreement. A lot of those people out there were people that he had nothing to do with directly, but he knew them.

Q. Like Kwiatkowski, he did not have anything to do with it?

A. He did not strike me as having anything to do with it. There were two fellows that I say, Kwiatkowski.

Q. Kwiatkowski was sort of an independent operator?

A. I couldn't swear to that.

Q. It did not appear to you that Frank had anything to do with Kwiatkowski?

A. As far as owning a still, I really don't know.

I was not on the bond with Kwiatkowski. I never went bond with him. I first saw Kwiatkowski in the Commissioner's office. He was arrested. I talked very, very little, very little with him that day. The man couldn't understand me so well. I did not know he had \$4400.00 in the South Chicago Trust and Savings Bank. I would have raised my price for bond if I knew that. I did not raise my price when I found out. I never did find out until the case was over with. Frank Hodorowicz told me. We

got to talking about it. It was not brought out before the commissioner. That was never brought out. I did not know he had \$180.00 when he was arrested. I found that out after I took him out, he had a slip and I tried to get him to give me the money over at the station but he would not do it. So I took him back out to Frank. He 1098 paid me. I did not go directly to the station with him. I went to the Hardware store first. I saw Frank and some other fellow there, I just don't remember, I don't know his name. He was a Polish fellow.

Q. Kwiatkowski was not one of Frank's men, was he?

A. Well, you ask me to assume something. I don't know that.

Q. You knew Frank's men, the stills that Frank was interested in, didn't you?

A. Well, I will tell you now, there is a long explanation of that. I would not want to say yes. I would not want to say no. They did not introduce me to those fellows. I will answer you this way: Frank never introduced me to any of his workmen until they were arrested. He would call me and tell me to give bond to so and so, get Tony so and so out. It is Okay. I never asked him if these are your men, if they work for you. I took them out. Got my money. When the time come to have them in court I would call Frank and say, "Have so and so in Court."

Q. After the hearing you learned that Kwiatkowski's report in that case showed he had \$4400.00, is that right?

A. To tell you the truth about that, Mr. McGreal, the evidence in that case never did come out before the Commissioner, if you want me to say that.

The evidence never did come out before the Commissioner. After the case was over Mr. Balaban asked across the table, he said, "Can this man have his bank book?" I heard it. The Judge say, "What bank book?" And he says, Mr. Balaban, said, "Judge, there is a bank book and some keys that were taken from this man."

The judge said, "I didn't hear anything about." 1099 The Agent said, "Mr. Ritter has got them." He said, "Where was the stuff found?" The judge asked him. The agent told him it was found in his room.

Q. It was after the hearing that you found out that the record showed he had \$4400.00, isn't that right?

A. I don't believe I ever found out. Frank told me.

Frank did not tell me he had read the report. Frank

was over to the bank with me. Frank told me, he said, "That old man had me fooled. I didn't know he had the kind of money."

The bank book never was before the Commissioner. Not a word was said before the Commissioner about this man's financial responsibility. The agent took the stand. The Commissioner told him to tell his story. He told his story. I heard his story. I was sitting right there. I received about two hundred dollars for that bond. The bond was twenty-five hundred dollars.

Q. Who got the other \$875.00, or whatever it was?

A. That is what I have been trying to find out.

I did not get it. My lawyer did not get it. Not that I know of. He got his fee. I don't know what he got for a fee.

Q. You heard Kwiatkowski say his case came back, didn't you?

A. I know that.

I know what he meant by that.

Q. Did the Agent talk to you about the \$600.00, did he?

A. What agent?

Q. This man you said was a nephew.

A. So he was an agent?

Q. Yes.

1100 A. Yes.

This man said he was a nephew. He talked to me about it. He talked to me about the \$600.00. I told him that the story was preposterous. I did not take no \$600.00 from that man. I did not know for sure before I took the stand that he was an agent. I didn't know for sure. I will tell you. Naturally I kind of suspicioned it.

Q. The agent told you he asked for that \$600.00, didn't he?

A. Last week downstairs he did. I didn't know who he was.

Q. You testified that four or five months after the arrest of Kwiatkowski he met you and told you he asked for the six hundred, didn't you?

A. That just happened the other day, just about ten days ago, just before this trial started, when you were subpoenaeing all your witnesses. I ran into him downstairs in your office.

I certainly knew what witnesses you were subpoenaeing. I certainly was watching them closely. I talked to a lot of your witnesses. I don't know whether I did or not talk

to Mike Hodorowicz. I know I talked to Frank about two or three times when he was coming down here. I don't think Mike was with him. I think I did have a conversation with Mike about this case. I think I did talk to him about this case. I talked to everybody about it. I think I did that he was subpoenaed as a witness in this case. I did not talk about the Kwiatkowski matter. We talked about the Sweede Swanson and Christ Del Rocco matter. I did not talk about the meeting out at the store that Sunday morning. That was not mentioned. I did not try 1101 to talk about it. He did not mention it to me. We did not talk about Raubunas or Widzes. I don't know those fellows. I don't think we mentioned Kretske.

Q. Did you talk with Mike Hodorowicz about the meeting that you had with Kretske at his office?

A. No, no, no.

Q. Since he was subpoenaed as a witness here?

A. No, no.

I talked to other witnesses in this case. I talked to old man Kwiatkowski. I talked to him in Tony's saloon.

Q. Did you make any threats against him at that time?

A. I never threatened a man in my life.

Q. Did you threaten him?

A. No, no, no, sir.

We had a very gentlemanly conversation. Very quiet. He told me just the direct things they were trying to do down here. I did not tell him what I was going to say down here. I wanted to know why did he bring that man to me? Why did that man accuse me of taking \$600.00 from him, because it was news to me.

Q. Did he say anything to you about his automobile?

A. I was not interested in his automobile. I was interested in the two-hundred for the bond. That is all I was interested in.

Q. You said you sent one case to Captain Boddie, is that right?

A. Oh, I took Captain Boddie to the case.

As the result of my taking him to the case he became counsel in the case and another one after that. I did not take Kwiatkowski's case to Mr. Balaban. I would have done it. I recommended Mr. Balaban originally to those people.

Q. What lawyer did you take the Swanson and Del Rocco case to?

1102 A. I didn't know they had a case. I never knew that Patsy Del Rocco ever was arrested in this building, not never.

Q. Wasn't he in the Stony Island still?

A. Not that I know of.

Swanson was arrested with Anthony Hodorowicz.

Q. Was Joppek arrested?

A. I don't know Joppek, Mr. McGreal. It was night time, I really didn't know the man.

Q. Do you remember the day you went out to see Mr. Ostrowski?

A. You mean what kind of a day it was, or something like that?

Q. Yes.

A. No, sir, I do not.

I do not remember what time of the year it was but I know what time of the day it was, though. I did not stop into the Clerk's office and check any records before I went out there. No sir, I did not stop to check. I never knew Ostrowski before. The first day I ever met him. I do not know his father. I did not make bond for his father when he was arrested in that still. Ostrowski undoubtedly did have my card, but he made his own bond. I know how he got my card, he told me how he got it, Frank gave it to him. That was prior to the meeting I had with him out there.

Q. Now, before you went out there did you check any of the records in the building here about that still?

A. There were no records to check.

I know there wasn't. I just know. I had not made a search of the records in this building, there was no records to check. When I go home my wife tells me a man wants to see me, so why should I check records?

1103 Q. You mean to tell me there were no records to check on Swanson-Del Rocco?

A. No, I had no records to check.

Q. Wasn't there a record in this building about the still?

A. No, not the Clerk's.

Q. Where was the record?

A. How am I to know?

Q. It wasn't in the Clerk's Office; where was it?

A. How do I know?

Q. Did you check the Clerk's Office records?

A. No, I did not check the Clerk's Office records. Any-

body arrested, your records don't show until they are indicted. Where am I to go and check the records?

Q. You say now that you did not go out there and get \$500.00 in that case?

A. I certainly do, emphatically.

(Witness excused.)

THOMAS B. GILMORE, called as a witness on behalf of the Defendant Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Thomas B. Gilmore, I live in Chicago, I am a lawyer, since 1927, I am a member of a firm, Packard, Barnes, McCaughy and Schumacher. It has been the same firm for fifty years, one of the oldest firms in the City. Alfred E. Roth, one of the defendants here, formerly had an office over there at our firm. Our firm has referred Federal court work to Mr. Roth.

(Witness excused.)

1104 HARRY F. HAMLIN, called as a witness on behalf of the defendant, Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Harry F. Hamlin. I live at 1120 West Loyola. I have been a member of the Bar 33 years. I have been a member of the legislature; I was in the Army two years and came out as a Major, and I was an assistant Attorney General, assistant Corporation Counsel, and First Assistant United States Attorney, and Judge of the Municipal Court for six years. I know the defendant Norton I. Kretske for sixteen years, and in that time I found that we had mutual friends and neighbors and acquaintances. I learned the general reputation borne by Norton I. Kretske before this trouble concerning his honesty and integrity. I would say it was very good.

(Witness excused.)

HERBERT H. KENNEDY, called as a witness on behalf of the Defendant Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Herbert H. Kennedy. My address is 1348 Lake Shore Drive, Chicago. I am an attorney. I have been practicing law nineteen years. I am a member of the firm of Moses, Kennedy, Stein and Bachrach, since 1925. I am acquainted with Alfred E. Roth approximately four or five years. I have had occasion to confer with him with reference to Federal Court matters.

(Witness excused.)

1105 HARRY I. WEISBROD, called as a witness on behalf of the defendants, Glasser and Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Harry I. Weisbrod. I live at 545 Melrose Street, Chicago. I have been a member of the Bar since 1917. I was elected a member of the legislature in 1923 and served in the fifty-fourth general assembly. My practice of law includes the practice sometimes here in the Federal Court. I happened to be the attorney for one Ralph Boguch, a man who was wanted on a removal case back in Montana. I appeared before Commissioner Walker in that case. I represented Mr. Boguch, known as Ralph Sharp, I believe. Mr. Drymalski represented the government. I don't believe that Mr. Kretske and Mr. Glasser were there. I did not in any way consult or take the matter up with Mr. Kretske or Mr. Glasser. I refreshed my memory in the last two days, and after examining my file, I found a note that he stated that it was not he, but it was his father that was wanted in this removal proceedings. After the hearing the Commissioner discharged him.

Cross-Examination by Mr. Ward.

That is right that I refreshed my recollection in the last few days. Previous to the last few days I did not have any recollection of the Sharp removal case. I refreshed my recollection after I talked with you, Mr. Ward. That is right, I called you on the telephone.

Q. And you stated to me over the phone you had positively no recollection of that removal case at all, did you not?

1106 A. When I talked to you, Mr. Ward—

Q. Did you say that, yes or no? Did you say you had no recollection of the removal case at all?

A. Up to that time?

Q. Yes.

A. Yes, when I talked to you.

That is true that I mentioned I had something in my office with the name Boguch or Ralph Boguch on it, but I didn't have any recollection of the case, or what occurred there, it happened four or five years ago and I couldn't locate my files when I talked to you. I believe it was in 1937, 1936 or 1937, that it happened. I don't remember how long the hearing did last. My client said it was his father that was wanted. I remember that distinctly. Mr. Drymalski said something there, I just don't remember what he said. I don't remember if he offered any papers in evidence of any kind. I don't remember that he mentioned about a certified copy of an indictment. I have not looked at the file since.

(Witness excused.)

SIDNEY S. ECKSTONE, called as a witness on behalf of the defendant, Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Sidney S. Eckstone. My address is 120 South LaSalle St. I was a member of a Federal Grand Jury in this district. I served as foreman of the April 1937 Grand Jury. Mr. Glasser appeared among other Assistant District Attorneys representing the Government before that Grand Jury. Various proceedings were

had and bills and no bills returned. At the conclusion of my service, I made a report to the Court.

1107 Q. And did you bring a copy of that report with you?

Mr. Ward: I object to that. It is immaterial, Your Honor, irrelevant and incompetent, what report this foreman made to the Grand Jury in that case.

(Whereupon the Jury retired from the court room.)

Mr. Stewart: Now, the only question pending, Your Honor, was "Have you brought a copy of your report with you?" And I think I should be permitted to ask that.

The Court: And assuming the answer is yes, then what?

Mr. Stewart: Then we expect to show the report made by that Grand Jury, and it is along the line, as I understand, as my opening statement, that that Grand Jury made a report to the Court. Well, Your Honor will remember the opening statement, I summed the report up. And I respectfully submit—

The Court: Have you the report? Let me see it.

Mr. Ward: Your Honor, I have never seen the report, or don't know anything about it.

The Court: Let me have it.

(Witness produces report and hands to Court.)

Mr. Ward: The reason I object to it is because I have not seen it.

The Court: Who wrote out these reports?

The Witness: I wrote them in longhand, and Mr. Glasser's office made out a copy. I had the copy made in the office.

Q. You wrote that out in longhand and turned that over to Mr. Glasser in his office, and his office copied it on the typewriter?

A. Yes, sir.

Q. And did you give Mr. Glasser copies of this report?

1108 A. Whether he kept one or not I don't know.

Q. Now, he had those copies before the Judge got them?

A. Yes sir.

Q. You gave the copies to him before you submitted them to the Judge?

A. No, sir, the copy we made I took, and the copy he made—

Q. They were made in his office?

A. By his secretary?

Q. And his secretary wrote them out on the type-writer?

A. Yes, sir.

Q. And did he leave a copy with you?

A. No, sir, I don't think so.

Q. He read them?

A. I didn't see him read them.

Q. What is that?

A. If he did, I didn't see him read them, because I took them from the girl immediately.

The Court: What was the date of that report submitted to Mr. Glasser on the alleged conspiracy?

Mr. Ward: April 21st.

The Court: What year?

Mr. Ward: 1938.

The Court: 1938. How long was the Grand Jury that you served on as Foreman in session?

A. I think we were sworn in on the fifth, and on the—

Q. Fifth of what?

A. Fifth of April. And on the 22nd.

Q. Of what year?

A. 1937.

Q. And how long did you continue to serve?

1109 A. Well, off and on, I don't think we worked over eight, nine or ten days all together. The Clerk told us on the night of the 21st we had no cases that day, I don't think we did, but he told us when we came in that morning, we would be discharged tomorrow morning.

Q. Was Mr. Bailey the Special Agent called before the Grand Jury you served on?

A. I don't think so.

The Court: What time did you come here?

Mr. Bailey: I arrived here on May 8th, 1937, after this Grand Jury.

The Witness: One man was appointed Secretary in this Grand Jury room, and he made notations of every case.

The Court: Well, you wrote this out in longhand, who dictated it to you?

A. Nobody, sir.

Q. This is a picture of your own mind, is it?

A. It is taken from my Secretary's report, and read to my Grand Jury, and every man on the Grand Jury signed it, and it was turned over to Judge Wilkerson.

Q. You read this report to the other members of the Grand Jury after it had been typewritten?

A. Oh, yes.

Q. And you read it before you submitted it to Mr. Glasser?

A. I didn't submit it to Mr. Glasser. I asked him could I have his secretary write it.

Q. To his office?

A. No, my secretary and I wrote this together.

Q. That is, you submitted it to the Grand Jury before you had it written up?

1110 A. That I can't say, I don't remember that.

The Court: Did you look at this?

Mr. Ward: I have never seen this report, Your Honor.

Mr. Stewart: Are they duplicates?

The Court: They are not.

Mr. Ward: Your Honor questioned Mr. Eckstone about this report being made, and he said it was made in Mr. Glasser's office, is that what he said?

The Court: He said he and his secretary worked it out, and wrote it out in longhand, and turned it over to Glasser's office to be typewritten?

Q. Did you talk to Mr. Glasser about this report since the time you turned it over?

A. No, sir.

Q. Did you talk with anybody about it?

A. Yes, sir.

Q. Who did you talk with about it?

A. I didn't talk about it. I told him I wouldn't talk about it at all. Judge Wilkerson told me not to talk unless I was released and given permission by the Court to talk, and I was over to the United States's Attorney's Office, and I said, "I am sorry, I cannot tell you anything unless I am released by the Court."

Mr. Ward: You talked to me about it.

A. I talked to somebody in the office.

Mr. Ward: You talked to me after your name was in the newspaper, and you said you wouldn't talk to anybody unless the Judge released you, is that right?

A. Yes, sir.

Q. And I told you to wait until the time you
1111 were called, and you can ask the Judge trying the case, that is true, isn't it?

A. Yes. The contents, I spoke to no one about the contents of the report.

The Court: What is that?

A. I spoke to no one about the contents of the report at all.

Q. The Court: Do you want to be heard on this?

Mr. Stewart: Yes, Your Honor. Of course we have further proof, in the first place this is secondary, and we have proof of a search that has been made for the original, and we have been unable to find it. We will put that proof in. And we have some further proof of a conversation between Mr. Yellowley and Mr. Glasser, which I believe will make this competent. Does your Honor care to reserve the ruling on it so long as we have established—

The Court: There, I think I will make a ruling right now. I can't see this report appears to be a criticism on the activity of the agents, where it is competent or material. The objection to its admission in evidence will be sustained.

Mr. Stewart: Well, of course may we have the record show we offered it?

The Court: You may make your offer of proof.

Mr. Stewart: Your Honor is not ruling against us on the form of our proof?

The Court: No.

Mr. Stewart: It is on the substance of the contents.

The Court: Substance of the document.

Mr. Stewart: Because we could supply the rest of the proof.

The Court: Yes, sir.

1112 Mr. Stewart: May we read this into the record?

I understand this man wants to keep his copy, or, would Your Honor direct him to loan it to the reporters; we will save a lot of time, and let the reporters copy it.

The Court: Copy it and submit it to him. Let me have it. When it is copied it may be returned to the witness. Let the record show under the offer as proof of the contents of the report, the United States, April 1937 Grand Jury—

Mr. Ward: If your Honor please—

The Court: That report is the report of that Grand Jury.

Mr. Ward: I don't think the contents ought to be read in the record, because the newspapers are very active in this case, and seem to be writing things very beautifully, and I think—

The Court: Well, I don't think it material at all. The only purpose of reading it into the record would be for the purpose of using it on Appeal.

Mr. Ward: We will supply it at that time.

The Court: The Court will retain custody of this until the proper time. They are now offered by the Defendant as proof, and objected to by the Government, and the objection of the Government sustained. Your offer of proof may be made a part of the record.

Mr. Stewart: If it is ever necessary to make a Bill of Exceptions, Your Honor will see that the offer shows what the Court shows?

The Court: Yes, sir, without a doubt. Bring in the Jury.

(Thereupon the defendants offered the following proof.)

1113 The April, 1937, Grand Jury has been engaged in an investigation which may not only lead to the prosecution and punishment of all violators, but likewise obviate the many existing abuses apparent to us in the enforcement of the Liquor Taxing Act. We, therefore, desire, in open court, to make the following report and recommendations:

We observed that the Liquor taxing Laws are being enforced through the agency of the Treasury Department, the Department of Justice only prosecuting when evidence of violation is presented to it through the instrumentality of the Treasury Department. However, either by neglect or ignorance, the agents have not taken proper precautions in obtaining evidence, with the result that the same constitutes an illegal search and seizure and is often suppressed and not available for prosecution purposes. For example, those who operate and deal in illegal liquor and alcohol on a large commercial basis are often detected, but the agents, in their anxiety to cause an arrest, do not take the proper measures to secure search warrants. These simple steps, if followed, would make the search and seizure of the premises, in most instances, legal, and

those guilty of the crime would be effectively prosecuted. While these agents have been remiss in their duty in the manner of detecting and arresting the large illegal commercial operators and dealers, they have proceeded, we believe, along other lines with respect to the small home owner who sometimes may make an isolated sale and as a general rule does not engage in illegal business upon a large commercial basis. Many undoubted violators were brought to our attention, but we have been forced not to take any action in their cases because of the absence of a search warrant made it imperative upon us to accord these violators their Constitutional rights.

1114 There have been examples, too, where agents without search warrants have ransacked and searched private homes, and this abuse is much in need of correction and which should not be tolerated. Again, agents have been informed of illegal sales of alcohol, and following investigation, have verified the credibility of the information. However, instead of proceeding in such cases to enforce the law, they always recommend that the illegal dealer pay a twenty-five dollar tax, representing that such payment will make legal the future sales by him. They neglect, however, to tell him that the liquor or alcohol is subjected to a tax and may not be sold without attaching thereto proper revenue stamps, with the result that such dealers pay the twenty-five dollars and then proceed to sell the illegal liquor, only subsequently to be arrested for making such illegal sale. The dealers apparently relied upon the representation of the agent that by paying the twenty-five dollar tax, such sales would be permissible, indicating to us that the agents are more interested in exacting the twenty-five dollar tax than arresting and prosecuting violators. This section encourages the sale of untax-paid liquor, and in many instances other agents would make arrests for the very action induced by the former agents.

We cannot help but feel that the enforcement of all laws ought to be lodged in that body of the government which, by experience and training, is better qualified to act. While we understand that it is not the power of the Grand Jury to do anything except make investigations and institute criminal proceedings when probable cause exists therefor, nevertheless we feel that Congress ought to be memorialized to remove from the jurisdiction of the

Treasure Department the enforcement of these laws and invest the Department of Justice with the inquisitorial as well as the prosecuting powers under the Act.

We desire to commend the District Attorney for the very able showing he has thus far been able to make in the face of these existing abuses, and feel that many more violators would have been prosecuted by him had the evidence been legally presentable in the courts of this district. These abuses have not been the subject of investigation by prior Grand Juries, but have likewise resulted in condemnation by the courts in some instances. The abuses must cease so that a proper respect for the law in this community may continue.

1116 We, the April, 1937, United States Grand Jury, herewith bring our report on the cases brought before us with the necessary evidence for a true bill or no bill, against the people charged with an offense against the government and the people of these United States of America.

We recommend that this report be sent to Washington to Secretary of the Treasury, Morgenthau, or Attorney General Cummings. Advising them that we find unwarranted procedure has been taken in many cases brought before us; that a true bill could, and should have been brought against certain people, but the way the various agents obtained the information presented before the April Grand Jury was so far different than the instructions given us by you, Judge Wilkerson, that we could not do otherwise than vote a "No Bill," on some cases, that were handled so badly.

We recommend that the Secretary of the Treasury Morgenthau or Attorney General Cummings start a sincere investigation of the way these cases have been handled and proper corrections be made, so in the future, no more cases will or can be thrown out for incorrect gathering of information or present it to future grand juries.

We recommend that a thorough investigation be launched to find out when, when big operators of unlicensed alcoholic beverages and manufacturers of so-called "Moonshine" or operators of stills are to be raided, the still operators have the information on these raids in plenty of time to remove all evidence necessary for conviction.

From the evidence we have received from the witnesses this was done on one case, alone, on three different occasions. Where the still, owned and operated by the same people was moved to three different farms in the same locality within three months or less.

1117 We also recommend, that an investigation from Washington be started on two cases of large stills where the investigators have watched two buildings for a period of twenty-four hours or more; on one case there were three investigators and on another case, there were four investigators. They entered the premises to make a search without a search warrant, and then, after forcible entrance, found no one on the premises.

We, the April Grand Jury, recommend that the authorities in charge investigate why only the small seller of unlicensed alcohol is always brought in, with an exception of two or three, with all the necessary evidence to have the Grand Jury bring in a true bill. We also recommend that the Federal Government Agents discontinue being solicitors of the sale of tax stamps to violators who are found selling and possessing unlicensed alcohol; that when one or more violators are found doing the above, they should be brought before the proper authorities and dealt with accordingly, and not to be sold stamps by the agents to continue to break the law of this government. Then, in from three to six weeks, two or more other agents go out to the same place knowing full well that the people who purchase these tax stamps will be selling untaxed or "moonshine" alcohol, and arrest them from the evidence brought before us by witnesses and Federal Agents, the class of people who are sold this tax, in the majority of cases, sincerely believe they have a license to sell this alcoholic beverage. To eliminate this practice and misunderstanding, we, the April Grand Jury recommend:

That when and where a tax of this kind is sold immediately the City Chief of Police, or whoever is in charge of the city law enforcement body, be advised so they can start an investigation to see whether or not they have had the complete city and state license to operate in the sale of alcoholic beverage.

1118 We called before the April Grand Jury Commissioner of Police Allman, of Chicago, Illinois, and put this suggestion before him and he advised that he would be glad at any, and all times to cooperate with the govern-

ment agents one hundred per cent and felt positive that this would eliminate a majority of these minor violations.

At the time that Commissioner of Police Allman was before the April Grand Jury, he signified his willingness to take part in a conference between the government and local officers with the view of eradicating these violations.

We, the April Grand Jury, recommend that Assistant United States Attorney Daniel D. Glasser, be ordered to call such a conference, which recommendation, we make; because we are confident that Assistant United States Attorney Glasser, is a well, or better, informed on these cases than any one in Chicago, from all evidence placed before us.

We also recommend that in the event that it is not possible to continue this April Grand Jury for the next term of court, that Assistant United States Attorney Glasser be given the full power to proceed with the investigation that we have started as we fully believe if he is unhampered he can, and will find out who is really the head, or heads, of the alcoholic ring in Chicago.

We, the April Grand Jury, recommend this procedure one hundred per cent.

We, the April Grand Jury, commend very highly the efficient manner in which two agents presented their cases, brought before us, and condemn the various agents where a no bill was brought in. We commend very highly the cooperation of the United States Attorney's office and especially the cooperation of Assistant United States Attorney Daniel D. Glaser.

1119 We were informed by the assistant district enforcement officer of this district that because of the press of business he has no time to read the reports brought him made out by his subordinates, although he initials them, giving the impression that he has approved them; that he did not have enough help with which to take care of the proper handling of this, to us, seemingly important matter. From the evidence brought before us and the information given us, by the many government agents we interviewed, with few exceptions, on the same type of cases, they varied in their understanding as to how these cases should be handled.

From the information gathered, from different agents, investigators and special investigators, we, the April Grand Jury, recommend that men of proven ability be put on the large cases of violators, and they be allowed to

complete the case and not be removed, after it has been started, and other men put in to complete the case.

We were informed by the Assistant Supervisor of Enforcement of this district that a man who, at various times in the past had done a very fine job of investigation, and made some of the largest cases made in this part of the country, this man is to be demoted by the "Said" Assistant District Supervisor; that this man is now working on very, very small cases. We would like to have the Court determine why a man of proven ability such as this should be doing the work that he is at the present time.

We, the April Grand Jury, recommend that the authorities in Washington ask for a copy from the two court reporters who took the report of most of the proceedings of the April Grand Jury; and, from these reports, which have caused us to draw these conclusions herein-mentioned at various times, start a searching investigation which we fully believe will accomplish the results the government seems to want.

1120 We, the April Grand Jury, recommend that we be left on this investigation until it is completed. We also feel that there are different factions working in the United States Departments in this district that are not cooperating in the same manner that would be beneficial to all parties concerned. We feel and recommend that this lack of cooperation be eliminated entirely, so that better results will be obtained. If the court please to see that it is advisable to keep the April Grand Jury through another term, or until they have completed this investigation and made their final report, we ask that Assistant United States Attorney Glasser, be appointed as attorney to this Grand Jury and be taken off all cases until we can report fully to you or to whom you may designate.

What the April Federal Grand Jury fully believes, but has not had sufficient evidence to verify or sufficient time in which to complete an investigation, is that we cannot in justice to all make any further recommendations without doing injustice to some.

We, the April Grand Jury, recommend that you have our report read to the next three or four United States Grand juries along with the report from them which we are sure will be of material aid in helping stamp out this defrauding the government out of moneys due them on all

untaxed alcoholic beverages and the manufacturing of said beverage.

We, the April Grand Jury, 1937, recommend that the courts test the appointed court reporters and check their efficiency; we found too many important questions and answers omitted on transcripts asked for; and, as these may be used for future references, the questions in investigations that we recommended the courts to investigate, that the foundation whereby our criticism was partly founded, was partly omitted. We feel that this
1121 omission or omissions was caused by inefficiency, carelessness or reasons unknown to us.

Respectfully submitted,

The United States April, 1937,

Grand Jury.

Foreman

(But the Court denied said offer of proof on behalf of the said respective defendants, by their counsel, to which ruling of the Court, in so denying said offer of proof the several defendants, by their counsel, duly excepted.)

1122 (Whereupon the Jury returned to the Court Room.)

Mr. Stewart: Your Honor, in view of the fact that I promised the Jury I would prove this, in my opening statement, will your Honor inform the Jury as to the ruling, and I have there certain reports here.

The Court: For the information of the Jury, the Defendant's counsel is offering as proof a report made by the Foreman of the Grand Jury of April 1937 Grand Jury sitting in this district. The report made by that Jury to the Court, in which it criticized some of the Special Agents, Alcohol Agents for their activities, and so forth. The Court is of the opinion that is not competent evidence, and the objection to the admission of the evidence has been sustained.

Mr. Stewart: (Quietly to Court.) Would Your Honor ask or tell them also it comments on Mr. Glasser?

The Court: Oh, no.

Mr. Stewart: You can't say I didn't ask.

(Witness excused.)

DONALD N. BERCHEM, called as a witness on behalf of the defendant Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Donald N. Berchem. I reside at 534 Essex Road, Kenilworth. I am an Attorney at Law, practicing in this state for ten years, and during all that time I have been practicing here in the city of Chicago. I am a member of the firm of Ross, and Berchem. I am acquainted with the defendant, Alfred E. Roth. I have had occasion to refer matters of Federal business to Mr. Roth. It would not make any difference to me
1123 what part of the city my client lived when I referred these matters to Mr. Roth.

(Witness excused.)

JOHN P. DIGNAN, called as a witness on behalf of the defendant Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is John P. Dignan. I live at 1325 North Waller. I was in the Marshal's office here on October 9, 1939.

Thereupon it was stipulated and agreed by counsel that the witness was a prisoner of the United States Government and that he was present there and that he was there in jail when Raubunas and Dewes, who had become witnesses in this case, were there, on October 9 in the Marshal's office.

Mr. Stewart: Did you overhear any conversation or have any conversation with those two men?

A. Well, I was there at nine-thirty, and shortly thereafter they came in, and they were about in the same spot where I was at that time. Included with them there was Mr. Thomas and another man; all I can describe him as was he was a Jewish boy. They were in difficulties I believe in connection with selling cemetery lots, and I was waiting for to be taken down to Judge Wilkerson, before Judge Wilkerson's Court for to be arraigned.

Q. And will you give us your recollection of that conversation?

A. At that time he inquired—

Mr. Stewart: Well, you call one the Lithuanian, and the other Raubunas.

A. The other gentleman—

1124 The Court: You knew this man Raubunas?

A. I didn't know anyone, I never seen him before that day.

Q. You know one of the men was Raubunas?

A. I would say so, since I heard them described in the newspaper.

Q. How many men were in that jail with you at that time?

A. It was in the Marshal's Office, five.

Mr. Stewart: Well, I think if you understand the Lithuanian was Raubunas, that would follow from that stipulation.

Q. Did he wear glasses?

A. I don't know, I have forgotten that.

Q. Refer to the one as the Lithuanian, and the other, as the other one, and we will leave it to the Jury, and tell us what did the Lithuanian say as you now remember, if anything?

A. Nothing.

The other fellow inquired what my difficulty was, and I told him, and he told me, and the other fellow told me that he had been brought back from out of town, from prison out of town, I believe brought here from Leavenworth to testify in a bootlegging investigation. And shortly thereafter I was brought to Court. I returned to the Marshal's Office about maybe ten-thirty, and he returned, and we remained there, and when I returned Mr. Thomas, and this other fellow, Jewish gentleman, had not been out to court in the morning. I asked Mr. Thomas whether this other fellow was—The other fellow was not present at that time. He didn't return from the Court, he was not. When I was returned to the Marshal's Office, he was not there, and didn't return until close to twelve o'clock. I had no conversation when he did return. He entered into a conversation with Mr.

Thomas. I heard it. I was within one foot of him.

1125 He told Mr. Thomas that he had been taken back from Leavenworth, and had been taken downstairs, or upstairs, and was told that unless he testified for the

Government in this bootlegging case, that there were three existing charges unprosecuted against him which they had threatened to go and reinstate and seek,—and they would bring out a guilty verdict upon each, and a year could be expected on each, upon each one of them, and they would see to it that he would serve those three years consecutively, rather than concurrently. That is the substance of the conversation.

Cross-Examination by Mr. Ward.

The man that is telling this to someone, as I understand you described, is Mr. Dewes. I did not have any pencil or paper to write it down. I would remember this consecutive business and sentence, all of that. That is right, I was in the county jail, held there and it was for being in contempt of court, by Judge Philip L. Sullivan, for misappropriating \$25,000.00. I was also under indictment at the time of this conversation, and Daniel Glasser, the defendant, represented me.

(Witness excused.)

NORTON I. KRETSKE, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Norton Kretske. I live at 1225 Newberry Avenue, Chicago. I am a lawyer. I was admitted to the Bar in June, 1929. I was born in Chicago in the place where I reside now. That is at the same place, the Ghetto district, 12th and Halstead.

1126 My father has been a lawyer for thirty-five years.

I went to public school here in Chicago, high school and De Paul University, Garfield public school and Joseph Medill High School, all within the same district. I did not while I was District Attorney walk across the street to the Great Northern Hotel and meet the defendant Kaplan and walk with him toward a restaurant and have a conversation.

Q. After you left the United States District Attorney's office did Frank Hodorowicz come to you concerning his

trouble there he was indicted, the case where he was indicted.

A. No, he didn't come to me. First he came to me to help his brother, I believe he was arrested in a still at 6944 Stony Island.

Well we discussed the case as he stated it there and I said in my opinion I didn't think there was sufficient evidence to hold the gentlemen. Well, he asked me to represent the fellow and I said, "Well, it would be kind of embarrassing for me to represent him because I had been associated with Mr. Glasser." And he asked me for my suggestion and I said, "Well a friend of mine, Mr. Roth, is a very able and competent Federal Attorney and I suggest you see him and I believe the day—

Q. And did Frank Hodorowicz come back when he was indicted in his own trouble?

A. I don't know just when he came back but he did come back and he asked me to go—in other words he wanted me to get some help from Mr. Glasser and I said, "Frank, you are known as the biggest bootlegger in this town and I know the Government has been—I used the word "laying" for you and I don't believe anybody in the world can help you. The only thing you can do is go to court and battle it out the best way you can. He did

not give me any money at that time. When his 1127 brother Pete was in trouble, Frank Hodorowicz did

not come to me and pay me eight hundred dollars, and I did not take a trip with him in an automobile up north, that is ridiculous. I never did in my life give Mr. Glasser any money or anything of value in order to influence his conduct as an assistant United States District Attorney. I never discussed anything along those lines with Mr. Glasser. Mr. Glasser and I were associated here and friendly and we never discussed anything like that. I never made Mr. Glasser any promise of anything of value or money in order to influence his conduct as an official here. I never did ride in an automobile at any time in my life in which the defendant Kaplan was in. I never was in the Commissioner's office at any time that Montana removal case mentioned here, the record is 18978, was up or heard. I did not have anything to do with it. When that case was mentioned here, I took the files, I went to the commissioners and I saw where Mr. Drymalski's name appeared as representing the Government. I know of William Brantman. He is a Tax Ac-

countant and I understand he is a fix for the Capone outfit, he represented the Capone family in all their tax troubles. I know other people he represents in that connection. I understand he represents most of the book-makers, bookie owners and cabarets. He represented Murray Humphrey in a tax hearing where Mr. Hess was the attorney. I never had any conversation with him concerning Nick Abesketis, and never knew Nick Abesketis until I saw him sitting on the stand, that is the first time I ever saw Nick Abesketis, and I don't know anything about his troubles and his business dealings. I never did receive three thousand dollars from this man Brantman that was on the stand. I never was at the hardware store of the Hodorowicz's. I never did receive any money out at that hardware store. I never was in the hardware store and the only money I ever received from any 1128 of the Hodorowicz's was in my office as a fee. I never did receive any money from the Hodorowicz's on any of this trouble that has been mentioned for any purpose other than a fee. I never received any money from any of them where a conversation was had concerning fixing their case or anything like that.

Cross-Examination by Mr. McGreal.

I was introduced to Mr. Brantman in this building three or four years ago. I never had any business dealings with him, I am absolutely sure of that.

Q. Did you ever hear of the Sweseler Clothing Co., a corporation?

A. The Sweseler Clothing Company, a Corporation, I hear of them, it was a client I represented. I represented that Corporation.

Q. And Brantman was the accountant for that corporation?

A. I thought you meant along these lines.

I have known Brantman three or four years. I had no business dealings with him.

Q. In connection with the affairs of the Swessler Clothing Company?

A. I recommended that he be the accountant.

Q. And what else did you do in that connection?

A. Well, Mr. Swessler needed some money and I believe I o.k.'d Mr. Swessler's check.

I don't believe I knew at the time I recommended him as an accountant that he was representing Murray Humphrey. I don't know whether I did or not know at the time he was representing the Capone's or the syndicate. I don't think I knew of any of his connections.

Q. But you did recommend him as the accountant for that corporation?

A. Well, I didn't exactly recommend him, they 1129 asked if I knew an accountant and I said then that is the only one I know.

Q. When was that?

A. Oh, I think that would be about a year and a half, about a year and a half ago.

It is not just a few months ago. I don't know of any other conversation I had with Brantman, only as an accountant with the affairs of the Swessler Clothing Company, I believe. That is all the transactions I had with him. That is about all, that is what I would say right now. I can't recall any other business transactions with him.

Q. You say that is all you can recall now?

A. Unless you can refresh me with something.

The Court: Do you know of any?

A. No, sir.

Cross-Examination by Mr. McGreal (Continued).

I do not know Albina Zarrattini. I heard of her in this court room. I did not know where she lived.

Q. Did you ever go to Brantman's office?

A. I visited him a few times.

I can't say just when I visited him. Well, I visited him in connection with the Swessler, that is all about, I would say. That is all. It is not true that I received three thousand dollars from Brantman in connection with the Nick Abesketis case. I never talked to him about the Nick Abesketis case. I did not know that a case was pending in this district against Nick Abesketis. I did not know any thing about the seizure of the McMurdock farm in McHenry County. I think I resigned from the District Attorney's office April 15, it was effective April 15 but I think I left April 1. I resigned I think it was effective April 15, 1937. I filed a written resignation. I 1130 worked with Daniel Glasser, associated with him.

I first met Mr. Glasser when we came to work here.

I would say he came to work here a few months after I had been here. I was just working the year.

The Court: You were in the office April 1935, 1935 to 1937?

A. No, I think October, wasn't it October 1935?

Q. October, 1935.

A. I came in October, I believe the latter part of September or October, 1935.

The Court: 1935.

A Voice: That was 1934.

The Witness: Is that 1934?

Mr. McGreal: October 1934. And did you meet Mr. Brantman while you were an Assistant District Attorney?

A. Yes, sir.

I first met him in the office here in this building, I don't recall whether in my office or not. I think Mr. Harry Gordon was here on some tax difficulty, and I know Mr. Gordon, and he introduced me to Mr. Brantman. He was associated with the Checker Cab Co., I think Vice-President. He introduced me to Brantman. That is the first time I remember meeting Brantman. He did not introduce me in connection with the affairs of Mr. Gordon. He was here, and I stopped to talk to Mr. Gordon and Mr. Gordon said, "This is Mr. Brantman". Oh, I can't recall just when I next met Mr. Brantman. Oh, he is in this building quite a bit. He represents tax people. I don't know that I used to see him quite often, but I have seen him in the building. I wouldn't want to answer that I would see him once a week. I wouldn't want to answer once a month, I don't know how often I would see him. I told you I don't know how often I would see him. I 1131 would not see him in connection with any of the cases that I was handling. I don't remember the third time I met him. I don't recall when was the first time I was in his office, that would be hard for me to say.

Q. Well, it was about the time of this \$3,000.00 deal, or before that?

A. I don't know what you are talking about, a \$3,000.00 deal.

Q. Well, you know what I am talking about.

A. You said about the time, if I don't know anything about it, I don't know what it was.

Q. What is that?

A. If I don't know, I don't know what it was about.

Q. I am referring to the time fixed by Mr. Brantman when he delivered that \$3,000.00 to you?

A. He never delivered any \$3,000.00 to me.

I have never received any money from Brantman for my own affairs or for anybody else. I never received any money personally from Brantman in connection with the affairs of the Swessler Clothing Company.

Q. Did you receive any any other way, personal or otherwise?

A. I told you the arrangement I had, I okayed a check from Mr. Schwessler, and he gave him cash, and we had to make good the check.

Q. You Okayed it?

A. I told them to give him some cash on the check, and said the man was Okay, to withhold the check for three or four days.

I gave the money to Mr. Schwessler, there were three, four or five there of the employees of the corporation, they were there and needed money. I told them to take his check for it. I believe they did take it. I remember that. I would say that was about a year and a half, I think that was the time of the formation of the corporation. That was for \$700.00, something like that.

Q. Now, when did you first meet Frank Hodorowicz?

A. Well, I opened an office October 6, 1937. If you will refresh the date on that still at 69th street, it was probably after the arrest of those boys.

Q. About January 12, 1937, when Peter Hodorowicz was arrested?

A. Well, I don't know, he was arrested, but that was at the time that still on 69th Street—

Q. That was the seizure of the still?

A. Well, I don't know if the still was—

Q. Who were the defendants?

A. I think Swede Swanson and two of the Hodorowicz brothers, I believe, I don't remember, there are so many of them, I don't recall who that was.

To my knowledge Christ Del Rocco was never arrested here in Chicago. I met him one time. I met Swanson. I believe Mike was with Frank when he came to the office. I believe Pete Hodorowicz was one of the defendants. I don't know Tony Hodorowicz. I saw him sitting up here, but I believe I may have seen him. When you say know him, I never just meet men to know them personally. I met him as a client. I knew him as a client, when he came

with his brother in reference to his case. The first time I met Frank was in connection with a still at 6949 Stony Island Avenue. I don't believe Frank was indicted at that time. I don't think any of them were indicted. They were being prosecuted in connection with that still, I believe, they had all ready been before the Commissioner. I 1133 believe when Frank first saw me the case had been before the Commissioner and had been continued, waiting for a hearing. And then Frank came to see me, at my office. I believe it would be sometime near the date of that case. I refer to the 6949 Stony Island Avenue case. I think that is the address. I don't know if that was the seizure of December 31, 1937, if you will let me see the record—I don't know that it was on this 35 gallons on December 19, 1937.

Q. Was it the sale of the 25 gallons, on December 31, 1937?

A. You are asking me something I don't know anything about.

They only came to see me in reference to this one still, 69th,—I believe 6944 Stony Island Avenue. I surely know who the defendants were in that case. I helped Mr. Roth prepare the case. I believe they were charged with having in their possession untax paid alcohol, and operating an unregistered distillery. I believe at that address. I had a conversation with Mr. Hodorowicz about that case. I did not tell them at no time that I could fix the case.

Q. Didn't you tell them that you would see the Red Head about it?

A. Everybody was referring to the Red Head, I don't know who they are talking about.

Q. Answer the question yes or no.

A. No, sir.

I did not tell him that. As a lawyer I assisted Mr. Roth in the preparation of the case after Frank Hodorowicz came over to me the first time. I did not try the case. I believe it was stricken off with leave to reinstate. To my knowledge there was no trial held in that case. I 1134 prepared it with Mr. Roth for trial. We prepared the case until the day of the trial. It was set for trial, I believe May 5. The defendants came over to Mr. Roth's office and he came over here with them. I don't know if that day was the exact day it was stricken off with leave to reinstate. I did not have any conversation with Mr. Glasser about that case at no time. I was not in the

court room with him. I did not come in the court room. At no time in connection with that case. I believe I got a fee of \$200.00 or \$250.00. Frank paid it to me. I believe I did make a record at that time when I received it. I always do keep books and records. I have not got them here.

Q. Do you make entries in your books at the time you receive your fees?

A. Oh, I don't keep an entry, a day book.

Q. That is of your cash transactions each day, and every time you receive a fee or some money in connection with your law practice you make an entry in that book, is that correct?

A. It is customarily.

I do not have these books available. There was only one book, day book. Books that the insurance companies send out, a diary book that you keep from day to day.

Q. Now when Mr. Stewart was examining you you referred to the fact that after you left Frank Hodorowicz you were of the opinion that you could represent these guys, is that what you said?

A. These guys?

Q. Yes, sir.

A. I don't use that expression.

At that time I did tell them it was a little embarrassing for me to represent them. I suggested Mr. Roth. I told

Mr. Hodorowicz that I would assist in the preparation of the case, and I didn't think it was right for me to go in and represent him, because Mr. Glasser being so friendly with me, with the work, that I didn't think it was the proper thing to do to embarrass Mr. Glasser. Naturally I took his \$250.00, I was representing him.

Q. And what did you do with the \$250.00, did you give part of it to Mr. Roth?

A. Well, as all lawyers do, we split fees.

I naturally arranged to give him part of it as soon as I spoke with him. He wouldn't represent them unless he got his money.

Q. Now, directing your attention to that Sunday morning at Frank Hodorowicz's store, who was there that morning?

A. I was not there.

Q. You were not there?

A. I just informed you I had never been to his store.

I never was to his store in my life. I am positive of that, for no purpose, personally or as a lawyer. Representing no one, I was never at his store. I don't know where he lives. I never did travel with him socially. Just when he came down and would have lunch, we would go across the street and have a sandwich and bottle of beer. I wouldn't say I had lunch every day at the 1933 Grill. Customarily I would go to the 1933 Grill. I saw Harry Dukatt there. I maybe seen him one or twice.

Q. Didn't you tell Harry Dukatt on one occasion that you were at the 1933 Grill you had to leave him to go to see Mr. Glasser?

A. Not that I recall. I may have said it.

Q. Well, did you go over and see Mr. Glasser after you left?

A. I don't ever recall telling Mr. Dukatt I was going to see Mr. Glasser.

1136 I know Harry Dukett. I have known him for a few years, three or four years. I have heard he sometimes uses the name Harry Brown. I don't believe that at the time I knew him he was a defendant in this district. Later he was the defendant in an Alcohol Tax Case.

Q. You knew it, didn't you?

A. Not at the time you are referring to.

Q. What time am I referring to?

A. When I met Harry Dukatt in the 1933 Grill I don't believe he was indicted then.

Q. You do remember meeting him in the 1933 Grill then?

A. I say I may have.

I do not remember leaving him and saying I was going over to meet Glasser. I do not know what case Dukatt was indicted in. I did not know of the still at 809 East 40th Street. I did not know of the still at Union City, Illinois. I wouldn't know anything about his business. I did not discuss those cases with Mr. Glasser. I never discussed any case with Mr. Glasser.

Q. Do you know Pete Hodorowicz?

A. Except when he came in with his brother, that is all, in my office.

They were always coming and going. I don't know when Pete came in my office with his brothers. He always had a group of fellows around him. I never discussed anything, only with Frank.

Q. And the group was Christ Del Rocco, Swede Swanson and Frank, Pete and Mike Hodorowicz?

A. Well, he referred to them as a mob, I am just using the polite term.

Q. That was his mob?

A. Yes.

1137 I wouldn't say some would come to the office, some would come at one time and some others at other times. The mob was not at my office all at one time, there wasn't room for them, there wasn't enough room for them. I did not get \$500.00 from him at one time. I did not get a promise of \$700.00 more. I only represented him in one matter, that is all I know about it. I didn't know Peter Hodorowicz was no-billed. All I know that Walter Hort has a case still pending is what I hear while sitting in this court room.

Q. Do you know that there was a seizure of a still at 120 east 118th Place, in which Pete Hodorowicz and Clem Dowiat were arrested?

A. I have heard something about 118th Street while sitting here, I don't know.

Q. That is the only time you heard of it when you heard it here, is that right? Here in Court.

A. Yes, sir.

I do not know there was a still seized, I do know whether there was a still seized or not. I only heard from reference to a still being seized there. Frank Hodorowicz did not come to my office at 7 South Dearborn St. on the night of September 22, 1938 and say that that case was coming up before the commissioner the next morning. I did not say to Frank Hodorowicz that if you get \$800.00 that I would deliver it to the Red Head that night, and the case would be thrown out in the morning. And when you speak of the Red Head, I don't know who you are referring to. I didn't hear it. I did not ride with Frank Hodorowicz in a car from 7 South Dearborn street to an apartment building on the North Side to meet Glasser. I did not at any time ride up to the North Side to see Glasser.

1138 Q. Didn't Frank Hodorowicz stop your car in front of the apartment house, and didn't you say, "I will see Glasser now"?

A. I never was in a car with Frank Hodorowicz on the North Side.

I did not tell Pete to claim ownership of the still and it

would be thrown out in the morning. I never was in a car with Frank Hodorowicz on the North side, no. No. You keep asking me again, I told you I never was in a car with him. I did not say to Frank Hodorowicz that the case would be thrown out in the morning. I did not take \$800.00 from Frank Hodorowicz that night.

Q. Wasn't the case thrown out the next morning before the Commissioner?

A. I don't know what case you are referring to.

Q. Well you knew there was a still at 120 East 118th Place?

A. I only know what I heard in this court room, Mr. McGreal.

I don't know that there was a still at 120 East 118th Place, I only heard reference up here being made to it. I don't know that the case in connection with that still was thrown out before the Commissioner on September 24. That is what they say here. I was not interested in checking the records. Naturally any lawyer would know what a Motion to Suppress evidence is, it is a motion that you allege to the court that the evidence was taken illegally and should not be used as evidence against the party it was taken against illegally. You can allege it orally or writing, put it in a Motion.

Q. And did you assist in the preparation of that Motion?

A. I don't know anything about it. I don't know who presented a Motion. I don't know anything about it.
1139 I know Tony Horton. I didn't know him before I got into the building. I don't recall if I know Clem Dowiat or not. He might have been with Frank at that time.

Q. Was Clem Dowiat ever a defendant in any case that you represented—you were a lawyer in?

A. If he was in that 69th Street still, that is the only one I ever knew.

Q. Do you know the names of the defendants in that 69th Street still case?

A. I think one Hodorowicz, one Swanson, there may have been another Hodorowicz, I don't know, there are so many of them.

I do not know that Clem Dowiat was No-billed by the Federal Grand Jury for transporting alcohol from 120th and Ashland. I do not know John Kaminakis. I met Mr. Willie Wroblewski in Mr. Roth's office at one time. I know

Louis Kaplan. He testified he knew me since I was a little boy. That is true. I have known him since I was a little boy. I remember Louis Kaplan being on an ice-wagon when I knew him. The first time I met him he was an ice-man, that is the first I can recall of Louis Kaplan. I believe he was in the automobile business the last time I knew him. I heard he was a trafficker in alcohol. He was fined \$500.00 in Milwaukee, that is all. I have already informed you that I did not meet Kaplan in the Great Northern Hotel Lobby at any time when I was Assistant United States District Attorney. I am positive of that.

Q. Where did you have lunch when you were assistant United States District Attorney, generally speaking?

A. Well, it all depended, around pay day we would have it at the Great Northern, and other times might have it at a counter somewhere.

1140 Q. You had a habit of going to the Great Northern?

A. I don't know as it was a habit, it was customary for all of us fellows to go there for lunch.

Q. And you would just go there and have lunch downstairs, and upstairs some time?

A. Usually upstairs, it is cheaper upstairs.

There was a barber shop downstairs. I don't recall any special time for going down there. I wouldn't say I would go down there every day, occasionally. I did not meet Kaplan at 12th and Newberry a month before that.

Q. Did you meet him a month after that?

A. After what?

Q. The meeting at the Great Northern Hotel.

A. Meeting with who?

Q. Kaplan.

A. I didn't meet him there.

I never did meet Kaplan at the corner of Kedzie and Douglas.

Q. What kind of a car do you drive?

A. Right now?

Q. Yes.

A. At the present time?

Q. Then, at that time.

A. At what time?

Q. At the time you met Kaplan at Kedzie and Douglas.

A. I never met him. I heard you state Raubunas met me. You want to know what kind of car I was driving at that time? At the time Raubunas spoke of meeting me?

Q. Yes, sir.

A. A Dodge car. It was not my car. I never had a car, my brother had a car, it was a family car, we all helped to share it. It might have been in my name 1141 or my brother's name some times, it was our family car.

I might say my home at 1223 Newberry is about five or six miles from the intersection of Kedzie and Douglas. I believe Kaplan's automobile agency is located at Kedzie and Ogden. I would say it would be three-quarters of a mile, or mile, I am only quoting distance, I don't know. I heard Raubunas testify. I heard him state he saw Kaplan meet me and Glasser on three occasions at that intersection. I never did collect \$350.00 a week from Kaplan for protection on the Western Avenue still at 2524 South Western. I did not know there was a still at 2524 South Western. I believe the first time I learned that there was a still at that address was in this court room. The first time that I ever heard of it was in this court room during this trial. I believe it was in September, 1939 that I was indicted in this case. I have attended the preliminary hearings of this case, such as the hearing on the indictment and motions, and so on.

Q. And you never heard of the Western Avenue still until this case was tried, tried in this court?

A. Until this incident in this court. I don't mean this court room here, during the pendency of this case. Institution or pendency.

I met Victor Raubunas when Mr. Farber brought him to my office. I did not meet him through Kaplan. Farber's family is an old Jewish family in Chicago, and I believe I know the family, and went to school with some of the brothers. I have always admired Farber as an athlete and he was a professional ball player—I have known Farber maybe ten years. He brought Raubunas to my office.

Q. When he came to your office did he tell you he had met Horton in the Insurance Exchange Building just 1142 before he came to the office?

A. I don't recall him saying where he met him, but he said he had been making some preparation for bonds.

Horton did not communicate with me before Farber and Raubunas came in. I had a conversation with Raubunas and Farber at that time. I did not tell Raubunas

I would take care of everything for \$1200.00. I did not tell him that I would guarantee the case. I did not tell him that I would better than Tony Horton would on the case. I did not subsequently learn that Neiss, Widzes and two others were No-billed by the October, 1938 Grand Jury. I never knew that. I do not know that the Grand Jury of May, 1938 returned a No-bill for Raubunas, Kaplan and Eddie Dewes. I didn't know that. I still don't know anything about it. I don't know anything about that. I have not consulted these records that were introduced here. I don't know whether they were No-billed, Tru Billed, or anything else about it. I never did have a conversation with Glasser about the No-bill in the Western Avenue Still case. I never had a conversation with Glasser about the No-bill in the Arlington Heights case. I never had a conversation with Glasser about the Spring Grove Case.

Q. When did you first hear of the Spring Grove case?

A. I don't know which case the Spring Grove case is, maybe if you mention some defendants' names I might know, when you refer to the Spring Grove case, I don't know about it.

I do not know Joe Cole. I met Louis Pregenzer once. He came to my office after he was in trouble. He was indicted in some still. I don't know just where. I don't know if it was the Spring Grove Still. I had a conversation with him. He came to my place because he said I represented Dewes and he wanted Dewes to pay some money for him.

1143 Q. You represented Dewes in the Spring Grove case?

A. I don't know anything about the Spring Grove case. He said Dewes got him in this trouble.

I represented Dewes in the Beisner case.

Q. That was in the Arlington Heights case that you represented Dewes, now, or the Spring Grove case?

A. I believe I filed an appearance in a case, but I don't know whether it ever came to trial.

I represented Dewes. I don't know whether in the Spring Grove case or any other. I filed my appearance in the Clerk's office in connection with an indictment against Dewes. I don't know when that indictment was returned, all I know I filed an appearance. I don't know when it was returned, Mr. McGreal. I don't know when

Mr. Glasser left the office. I believe some time before the summer of last year.

Q. At the time the Dewes case was here for consideration by this court did you receive a telephone call one morning from Attorney Alfred E. Roth?

A. Well, when Dewes' case was under consideration I represented the farmer, Mr. Dewes here.

The Court: The question was did you receive that telephone call. Answer yes or no.

The Witness: No.

Cross-Examination by Mr. McGreal (Continued).

Roth did not call me up and tell me this man was squawking. I did not have any conversation at all on the telephone about Dewes. I did receive some money from Dewes. I would say about \$250.00. That was to represent him and help clean up his mother's property, which I did.

1144 Well, I told him that I would have to have a few hundred dollars to represent him properly, and investigate the case, and then he wanted to schedule his mother's property as surety on his bond, and we put a search in here, and there were so many objections, the husband had died, and it wasn't in the wife's name, and we had to go to the Chicago Title and Trust Company and clear it up and get a guaranty policy.

I would say I charged \$100.00 to clear the property up and the balance was for the case. I never did meet Raubunas on the corner of 12th and Halsted on a Sunday morning. I never did call him up and tell him to meet me. I don't know anything about the No-bill returned as to Raubunas in the Spring Grove case. I did not on May 15, 1938, meet Raubunas at the corner of 12th and Halsted and there receive a thousand dollars from him. I do not know Ralph Boguch. I do know Harry Weisbrod. He has known me since I was a little boy. I said he has known me since I was a little boy, Mr. McGreal.

Q. He represented Boguch before the Commissioner at that removal at Montana?

A. That is what he said this morning.

Q. Don't you remember about it?

A. I don't remember anything about it. I remember him stating it this morning, is that what you mean?

Q. Do you know whether or not he did represent Boguch at that removal?

A. I don't know anything about any removal.

I never met Boguch. I do not know Kwiatkowski. 1062 Polk Street I would say is about a mile or three-quarter from my home at 1225 Newberry. I know where Polk Street is and I know where 1000 West is. 1000 West would be Morgan or Miller, that is what that is called out in that neighborhood.

1145 I don't know what kind of store there is at 1062

Polk street. I was never there. Paul Svec was here in court. I didn't know him. I never represented Paul Svec at any time. I don't know him. I know Sheenie Yarrío. He is a fellow in the neighborhood. I don't know him, I know who he is. I have known that fifteen or twenty years. I know of Sheenie Yarrío for fifteen or twenty years. I might have met him in the playground around the neighborhood around 1225 Newberry. I wouldn't know how old he is, I could give you my idea. I would say thirty-six or thirty-seven years old. He is short, nice featured. I would say kind of chunky. I wouldn't say well-dressed fellow. I wouldn't say I met him the first time in the playground, I would say in the neighborhood. I am known by the name of Norty, just the same as Anthony Horton is known as Tony. Many of these people call me Norty. Paul Svec calls me Norty. I don't know anybody I know don't call me Norty.

Q. Paul Svec knew you very well?

A. I don't know; everybody calls me Norty. I don't know, I might be that kind of fellow, easy going; they called me Norty, I don't know.

I do not know when Paul Svec was arrested. I did not know Paul Svec was one of Yarrío's fellows. I did not know he worked for Yarrío. I didn't know what business Mr. Yarrío is in. I know he had a saloon on Jackson and Wells. I was an assistant Attorney in June of 1935. I remember a case of the United States *vs.* Workman and 32 others. I do not remember a man in that case by the name of H. L. Welsh, alias Yarrío. I never did see Yarrío in this building at any time. I did not know he was a defendant in that case. I do not know what disposition was made of that case. I had nothing to do with that case.

1146 I had nothing to do with it at any time. I was in the civil department here. I had nothing to do with

any alcohol cases. I wouldn't know that that was a seizure of a still at 932 Cullerton Avenue. I wouldn't know it now. There have been 50,000 gallons of alcohol. I don't know. I wouldn't know that. And I wouldn't know if Yarrio was a defendant. That I knew Yarrio from the playground out in the neighborhood does not mean that he was a friend of mine. Never seen him about it. I wouldn't know he was a defendant in that case. I told you I don't know anything about that case. I don't know anything about the case, I was in the civil department here, and I don't know anything about any alcohol cases. I remember a man named Workman testifying here. I remember his testimony. I remember Workman testified in this case. I recall him saying he saw me around the Commissioner's, but I recall him saying Mr. Glasser was before the Commissioner, and I happen to know Mr. Tappy was the Assistant before the United States Commissioner in that Workman case. I don't know, in case 902 ..., I saw the file here, and it stated Mr. Tappy was prosecutor. I don't know that that was only three or four years. I remember Workman said I was assisting Mr. Glasser at the Commissioners'. I don't know that Sheenie Albert was a defendant in that case later on, you just told me he was. I have never examined the records. I had no interest in it.

I do not remember the 9th day of December 1938, that particular morning that Paul Svec was arrested. I don't remember the night before—if you tell me what you want me to answer—

Q. Did you ever hear the name Paul Svec before?

A. Is that the fellow who called me at my home from the alcohol tax unit, is that what you are trying to say?

Q. You don't remember Svec is that right?

1147 A. I don't think you are being fair.

Q. Do you remember Paul Svec?

A. What do you mean, the name?

Q. Do you remember the name I mentioned, Paul Svec?

A. I recall him testifying if that is what you mean, would that be what you mean?

Q. Yes. He testified, he testified in December, 1938, he was arrested and taken out on bond.

A. I don't know if that was the date or not.

I did not ride in a Lincoln Zephyr with Tony Horton to 1062 Polk Street after he was taken out on bond. I

never was to 1062 Polk Street that day or any other. I did not at any time in company with Tony Horton and Paul Svec go to 1062 Polk Street. I never went there at any time. I know Garardi. He was a fellow from the neighborhood. I know his brothers very well. He is from the neighborhood too. I have known him over ten years. I closed a deal for his wife for the purpose of her health. That is the only business transaction I ever had with him. I understand he is in the wholesale grocery business. I don't know what he sells. I do not know Tishman.

Q. And this Gerardi is in the sugar business?

A. If that is part of the wholesale grocery business it means he sells—

Q. Norty, that is what it means.

A. I will call you Frank if you call me Norty. I never met you before I came here to court.

I do know Gerardi.

Q. And you have known him since you were a boy, is that correct?

A. I would say I am still a boy, some people still consider me as a boy.

1148 I met him every day, probably see him around.

I never met him at 1062 Polk Street.

I don't know when I first met Mr. Roth. I didn't know until the office here, I have known him as being a lawyer, but never discussed anything with him. It would be hard for me to say when I first met him. I might have met him in the office here or later. But I never had any discussion or dealings with him until I left the office. I referred a few cases to him as a lawyer, maybe five. I referred the Hodorowicz case. That was a still at 69th and Stony Island. We had two libel cases I believe where the Government took a truckload of sugar. I think Siegel was one name of the claimants in those libel cases. I don't remember the first name. I referred the Netko-Buchanek and Herman David case. They were all in one case. I can't recall off hand what other cases. We had some civil cases together we worked on. No others. That is all the cases I can remember that I referred to him. Most of the cases were in connection with alcohol violations, primarily so, that is particularly why I referred them. Either criminal cases or libel cases that grew out of the violations. I do not know the Wroblewskis. I told you I had met Willie in Mr. Roth's office. I do not know

John, Senior; I do not know John, Junior, Wroblewski. I did take a trip to Indiana with Mr. Roth. I think it was in July, 1939 I went there. I remember going there over the Holiday and I was awfully tired, it was on a Monday and Mr. Roth asked me to drive along and I wanted to stop in Plymouth to see John Kitch, an attorney. I went to Indiana with him. When I went with Mr. Roth it was to Fort Wayne. When we got to Fort Wayne we went to the Federal Building in Fort Wayne. Mr. Roth and myself. We met Mr. Alexander Campbell, the man who testified here.

1149 Q. Now did you at any time see the Wroblewski boys in Indiana?

A. Well, Mr. Roth surrendered Willie in Hammond and I drove along with Mr. Roth, he picked him up at his home and took him to the Marshal's at Hammond.

I did not at that time have any conversation with either of the Wroblewskis in Indiana. I never did at any time tell one of the Wroblewski boys to keep quiet. I had nothing to do with the Wroblewskis.

The Court: When were you admitted to practice?

A. 1929.

Q. And what was your experience or practice you had engaged in prior to the time you went into the District Attorney's office?

A. I took care of the civil business of my father's.

Q. And while you were in the District Attorney's office how many cases involving alcohol tax cases did you participate in?

A. I never tried any alcohol tax cases.

Q. Never tried any?

A. No, sir. I assisted in the preparation for Commissioner's hearings and I had charge of condemnation business, office work and other civil work.

Q. Would you say there was anything difficult about the defending of an ordinary alcohol tax case?

A. I prefer to do the civil work.

Q. Would you think it was difficult?

A. Oh, I believe some lawyers are more capable of handling them than others in defending this type of cases—

The Court: That is true of anything. In the average case there is nothing difficult about the trial of any of those cases?

A. I think there is.

Q. What is that?

A. In my opinion there is.

Mr. McGreal: Q. How long did you say you knew Mr. Horton?

A. Well, I met him when I came to work here, maybe a month after or so.

1150 Q. He was a bondsman in this building and that is how you happened to meet him?

A. No, I happened to make his acquaintance because I was in charge of the bond department and he happened to come in and was scheduling his property maybe every day.

Q. And he was a bondsman you happened to meet?

A. I explained—he would come with his property and in order to get his property approved I would have to o.k. it and I discussed it with his people and himself.

Q. I say the bondsman would come in every day, there is nothing contrary to that in your statement?

A. I would say he would come into the bond office at any time he had business in there.

I told you Kaplan's garage is at Kedzie and Ogden. I have been in there a few times, three or four times, I would say within the last year or two. I was never in there before that. I have known Kaplan fifteen or twenty years. I don't know how long he has had that garage. I would see him all over in the neighborhood in those fifteen or twenty years. No other place. I did have some business over at his garage, I wanted to trade a car in. I did not trade in the car.

Q. Would you see Louis Kaplan there?

A. His brother-in-law is mostly in charge.

I never saw Mr. Raubunas there. The only time I saw Mr. Raubunas was when he came to my office. I never saw Eddie Dewes there. I never saw Stanley Slesur there. I know Stanley Slesur. He came to my office. Oh; maybe last spring, he tried to get a mortgage on his home which was in his wife's name. That was the only time he ever came to my office. I do not know what was Stanley Slesur's business. I know he was convicted of alcohol, but I don't know whether that is his business or not. I don't know if Stanley Wasielewski was with him when he came to my office, he says he was. I don't know, if he was or not. I remember Stanley being there, Mr. Slesur, but I don't recall if he was with him or not, they

always came with somebody and they waited outside.
1151 I tried to get a mortgage on Stanley Slesur's home, but he couldn't get anybody to show where they were making a salary to make a F. H. A. loan.

Q. Where was the keep located?

A. I believe in Willow Springs.

I saw the file in the matter. I did not receive any compensation from Slesur in that deal. No, I don't remember now whether Wasielewski was with him. I do not know whether he was a defendant in a case pending in this District. I don't know anything about Stanley Wasielewski. Mr. Slesur said he was in my office, I don't know, I didn't see him. I remember him saying he was sitting outside I had a two-room suite there with waiting room out in front. Slesur went into my office. Well I can't say how long he did stay there, we discussed the building and I asked him to get some pictures, to bring some pictures back because I believe that is the rule before you can get a mortgage you have to have pictures of the property. I don't think it was important to the application of the loan, I think it was a requirement. I had a conversation there with Slesur. It lasted maybe half an hour. I don't recall if I did or not arise from my desk when he left. I don't recall if I did or not walk to the door with him. I do not remember seeing anybody sitting in the waiting room there. I only know Stanley Wasielewski from when I saw him in this court room. I did not know him before I saw him in the Court Room. I never saw him before.

That is correct I stated I knew Stanley Slesur. He had been to my office. No, I am not sure whether Wasielewski was with me on that occasion.

Q. Now, will you tell us the details about that mortgage on Slesur's home?

A. Without the record, I will give you the best of my recollection.

Q. All right.

A. I believe the home was in the wife's maiden name. He either wanted to sell or get a mortgage. I tried various places and was not successful.

1152 I tried to get a mortgage on the home, and tried to sell it, too. I had no other business dealings with Stanley Slesur. I said I first met him when he came to my office. The first time he ever came to my office. Oh,

I can't recall when that was. It was some time last year, I don't remember. It may have been 1938, I don't recall. I think it was some time last spring, some time in the spring. I think it was last spring. Some time in the spring. It may have been a year before. Edward Dewes came to my office after I represented him. The first time I ever saw him was when Farber brought him. The first time Dewes came to my office when Farber brought him. It was in the preparation of getting the other parties out on bond, on the Biesner farm case. I originally represented Dewes in the Biesner farm case and referred the matter to Mr. Roth and represented Biesner. Biesner was the farmer. I believe I filed an appearance for him. I do not recall when. I filed an appearance for Dewes in another matter. Oh, I don't recall what case that was. Another alcohol violation. I don't think that case ever came to trial—just that Biesner case. I believe it was consolidated or merged, consolidated or merged or sentenced in one, ran into the sentence in the other case.

I did have a conversation with Dewes in the preparation of the trial in this case at my office. I did not occasionally have a conversation out in the hall near the office. I did not ever tell Dewes that Stanley Slesur was brought back from jail, "We will all go to jail". I did not make that statement to Dewes. I did not tell him I was afraid to talk in the office, that I was afraid there was a dictaphone in there.

Q. Did you ever tell Dewes you resigned under pressure, and for that reason were unable to get a conviction put through in the Federal Building.

A. No sir.

1153 I can't recall how many conferences I had with Dewes, four or five. I believe the defendants in the case where I represented him were the farmer, Dewes, Raubunas, Widzes, by the farmer I mean Beisner, Farber, and Duthorn. I did not represent Dewes in the Spring Grove case, I don't believe that case ever came to trial. I may have appeared in court in the Spring Grove case. I don't recall.

Q. Did you file an appearance in that case?

A. I am pretty certain.

Q. What?

A. I don't know whether it was the Spring Grove case, but it was with the second case he had.

Q. Have you represented him in a case you would know where the still was located?

A. You are referring to Spring Grove? They say "a town" and mentioned a farm.

The case where Kaplan, Pregoner, Rankin and Dewes were defendants never came to trial. I believe I did file an appearance in that case. I don't recall when. I did not receive a fee from Dewes for that. He asked me to file an appearance. I believe Mr. Roth represented Kaplan for a while in that case and Kaplan had him withdraw and retained another counsel. I never did have a conversation with Dewes where I told him that for a certain amount of money I would get him "No-Billed" in the Spring Grove case. I do not know that Dewes was "No-Billed." I do know of Fred Blumental. I don't know an agent of the alcohol tax unit by the name of Goddard, I saw him in court here.

Q. Did you ever see him before?

A. I see him in the building.

I do not recall that I ever handled any case with Mr. Goddard when I was in the building as assistant United States Attorney.

Q. Did you ever handle any case as defense counsel after you left this building, in which Mr. Goddard might have appeared for the Government?

1154 A. I just handled the Beisner case. I don't recall him being in that case.

I do not recall meeting Mr. Goddard in the front office of the District Attorney's office on the eighth floor one Saturday morning about five minutes of twelve. I do not recall meeting him on the following Monday about five minutes of twelve. I did not say to Mr. Goddard at that time "We know all about you. We don't arrest fellows for that."

Q. You know Joppek?

A. I just heard his name mentioned.

Q. Do you remember the incident now?

A. Yes.

Q. Joppek was the prisoner?

A. I don't know.

Q. Well, you remember Joppek?

A. I remember that name being mentioned here, I don't know anything about the man.

I do not remember meeting him at the time. I do not

remember meeting Mr. Goddard. I did not say that. I did attend a conference with the other counsel in connection with the preparation for trial for the Beisner case. I saw Mr. Adams in court. I know George Cohen. I do not know Abraham Cohen. I just know George through a conference. I know Mr. H. L. Passman. I know Peter Passman. H. L. Passman and Peter Passman were office associates of mine. I remember the Herman David, Sheany Albert, in the Yarrion case. I know Horton. I know he made a bond in that case. I do not know the amount of the bond was originally, but I understood there was bond forfeited and they called me when the forfeiture was there. He said as long as I represented the fellows, I ought to prepare a petition to suppress and set the forfeiture aside, I did. I got Mr. Passman to come to this building. I believe I did notarize the petition to vacate the forfeiture.

1155 I received my fees in that case from the man who sent the case to me. That was Frank Romaro. He was not a defendant in the case. I received \$300. I did not receive any fee from Horton nor from anybody else. I never had any discussion with Dewes about a No-Bill. I never talked about a No-Bill. I do not know that he was No-Billed. I had no interest in investigating that.

Q. You represented him, didn't you?

A. Yes sir.

Q. In the Spring Grove case?

A. If that was the case you are referring to. You just referred to the file.

Q. What file?

A. The one in your hand.

Q. You mean this?

A. You are reading it off.

Q. Did you have any files in the Spring Grove case?

A. I told you I didn't know anything about the Spring Grove case.

The Court: I wish you would identify for this witness, the location of the Spring Grove case.

Mr. McGreal: Q. Directing your attention to the seizure of a still in a town, three miles from Spring Grove, Illinois, in which Dewes, Raubunas, Kaplan, Cole, Pregonzer, Rankin and Boguch were indicted.

A. What is the name of the town?

Q. Spring Grove near Fox Lake.

A. Did I represent them in the case?

The Court: Did you represent any of these defendants?

A. I represented Dewes in the case. I believe he told me it was Fox Lake.

Mr. McGreal: Q. To refresh your memory, one of the witnesses testified that Fox Lake was near Spring Grove.

A. I think he told me Fox Lake. I don't recall whether he did or not.

1156 Dewes never told me he was No-Billed in the Fox Lake case. I believe I did examine the indictment in that case. I believe it charged the customary internal revenue violations, unregistered still. Untaxpaid alcohol, the customary Internal Revenue indictment. All violations carry certain provisions which are always incorporated in every indictment. I don't know anything about the Western Avenue still. I know of Fred Blumenthal. I have seen him.

Q. I will show you a document, marked for identification as Government's Exhibit 135. Is that the Fred Blumenthal you know?

A. From the picture, I would say it was. Can I read it?

From the picture, it closely resembles the man I knew. I do not know any brother of his. I was not with Fred Blumenthal in the lobby of the Sherman Hotel on an occasion about three years ago, I was never in the Sherman Hotel with Mr. Blumenthal.

Q. Have you ever been any place with him?

A. Well, that is hard to say. I may have met him on the street but I never had a social visit or call.

I do not know that Fred Blumenthal was mentioned as a defendant in the case, *United States vs. Workman*, No. 20972. I never saw the case report in that case. I did mention this morning that I knew a man by the name of Yarrio. From the picture marked for identification as Government's Exhibit 188 it resembles the same Yarrio I know. That is the same man I met as a boy in the general neighborhood of Maxwell and Newberry Street. I never saw him with Girardi. (Witness excused.)

DANIEL ANDERSON, was called as a witness on behalf of the defendant Glasser having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Daniel Anderson. I live at 5333 Cornell Avenue Chicago, I am an attorney at law. I have been so engaged over twenty-five years. At one time I was 1157 an assistant United States Attorney, for the period going on ten years, beginning 1924. I know the defendant, Daniel D. Glasser. In my business as a lawyer I did represent a man by the name of Victor Raubunas. Well, Raubunas came to me, I would say, the very first part of November, 1938 and I personally represented him until I became so disabled that I could not come down any more. That was in May, 1939.

Q. Since May, 1939, you have been suffering from a physical disability which prevented you from attending court?

A. It is arthritis. It came on two years last November. I was confined to bed and this is the second time I have been up and had my clothes on.

I did represent Mr. Raubunas in the case entitled United States vs. Raubunas, Dewes, et al. It was pending before Judge Wilkerson. During the time that case was pending and was on the call before Judge Wilkerson various times for trial I had occasion to appear before Judge Wilkerson, several times last winter. I think that every time I came here I moved Judge Wilkerson for a continuance. I thought I would be getting better and I wanted to try the case, unless we could dispose of it some other way, by a plea of guilty or something.

Q. And prior to the time that case would be called in court before Judge Wilkerson on each occasion, did you have a talk with the defendant, Daniel Glasser, about the trial of the case?

A. Yes I did. I wouldn't say every time. You mean before I came into court?

Mr. Callaghan: Yes, sir.

A. Yes, except on occasions when he was not in. I came to the office from across the street where my office was, and I always showed him the courtesy of coming in two or three days before the case was called for trial,

and would tell him I was going to ask for a continuance and wanted him to know it, as he did not have to get his witnesses down. As far as I knew, he always had his witnesses down, but on two or three occasions I did not see him and I talked to Miss McGarry. That is his secretary, and would leave the message with her and would call up later in the day on the telephone.

Q. You know that case was continued a great many times on your motion because of your illness?

A. That depends on what you mean by a great many times. It was continued several times, but there were about two or three times, I would say twice, that it happened Mr. Glasser was busy in a trial of a case he had on trial. I know that happened. I am sure that happened twice; or otherwise, Judge Wilkerson was busy in the trial of a case.

Two or three times, the motion did not have to be made by me. There were several times, I would say at least three times, when the motion was not necessarily made by me, because either Judge Wilkerson was in the trial of a case, and on one occasion Mr. Glasser was ill. I remember that, and on one or two occasions, he was engaged in the trial of a case. That may have been the same case Judge Wilkerson was in at that time, but, of course, I don't know.

Q. During the time you represented Victor Raubunas did you ever discuss with Victor Raubunas, disposition of his case other than on the merits?

A. Well, I told him almost from the beginning that in my opinion,—after I talked to Mr. Glasser, after he came after Raubunas came to me, I talked to Mr. Glasser, and Mr. Glasser told me—

The Court: The question was, whether you ever discussed with Victor Raubunas the disposition of his case other than on the merits.

A. Yes, after I talked to Mr. Glasser, I told Raubunas I believed he would have to plead guilty. I did. I told Raubunas I believed he would have to plead guilty, that he would get the best break by pleading guilty.

Mr. Callaghan: Q. Did Raubunas say anything to you about any effort he was making to have anything done with his case in addition to having it disposed of on the merits?

1159 A. A plea of guilty would be on the merits. Is that what you mean?

Q. Yes, sir.

A. I would consider that on the merits, although there would be no trial before a judge or jury, if that is what you mean.

Q. Well, did Raubunas ever talk to you about fixing his case?

A. Not to me, about me fixing his case, no.

Q. I understand. Did he ever talk to you about any effort to have his case fixed?

A. Here is what he told me when he came to me. He told me—I don't know if it was this case or if he was in the distilling business—Raubunas was indicted in connection with a still, although at first he would not admit he was in the case. He tried to tell me he was not in that still. He told me right after he came to me, that he had been double-crossed by his partner.

He did not say at that time who his partner was. I either got it from him later or it was hearsay. At that time he said he was double crossed by his partner taking his money and not using it the way he was supposed to, but kept the money himself.

He told me that in the beginning, but after I became ill. I was in bed from May 2nd on. He came in during June, May, June and July, until the case was disposed of. It may have been July or August. He was out at my home several times. He usually would come and ask about a real estate deal. He was selling his home. I told him he should go to my office, but he would come and talk about the real estate deal and why it was being delayed.

He had only paid one-half of the retainer and nothing in connection with the trial of the case. He said he could not pay and was always stalling on account of not being able to sell the property, which he finally did.

1160 Then he talked about fixing the case. I told him,

"If you try anything like that, you are going to get the works, because" I said, "Mr. Ward will not stand for it and nobody will. That is the worst thing you can do." Long afterwards I heard from my associate that there was something said down here to Raubunas about having somebody,—or somebody calling Mr. Ward. When he came up the next time, I asked him if he had done that and he said no, he had nothing to do with it, but a Lithuanian friend of his had done it without him knowing it.

I said, "You can just consider yourself as getting the

extreme penalty for that. Mr. Ward has got to protect himself, and if you have done that Mr. Ward is going to charge the court to give you the severest penalty the court can give you." "He may tell Judge Wilkerson about it, and if he does, there is no chance for leniency."

Another time he came up, he was worried about that. He says, "Would it be all right if I would go and see Bishop Sheil?" I said, "I don't think Bishop Sheil would do anything for you." He said he knew Bishop Sheil quite well and his daughter knew him very well, because she sang in some choir. He said he was sure Bishop Sheil would do it. "Well," I said, "of course, that is a different situation. To go and talk to Bishop Sheil, then you are not using money, you are just using your friendship. I don't believe Bishop Sheil will help you, but if he does, it is all right with me, as I can do nothing for you. You are in hot water now. If you can straighten it out with the United States Attorney, it will do you some good, but otherwise, you are going to get the works, in my opinion. Bishop Sheil sponsored Mr. Campbell, and if Bishop Sheil will do it, he might do something for you, but I don't think he will."

Another time, I asked, or he told me he had been to see Bishop Sheil and Bishop Sheil did just what I thought he would, would not listen to him.

1161 Mr. Callaghan: Q. Did he—did you ever have any discussion with Victor Raubunas about fixing Mr. Glasser? Did he ever say anything to you about it?

A. He never said anything like that. As long as I was well and was handling his case, he never talked about fixing the case or trying to fix the case with anyone as long as I was handling the case; but it seemed he got panic stricken after I could not come down any more. I told him I could not take care of the case and I wanted him to plead guilty and throw himself on the mercy of the Court. He did not want to do that.

I did represent a defendant by the name of Stanley Slesur, he brought in Victor Raubunas.

Q. Now was that case continued in much the same fashion as Raubunas, because of your disability?

A. And a few more times. There were three cases against Stanley Slesur. They came up at different times, but were set so that all three would come up together and would be continued the same way.

I might say I had Stanley Slesur plead guilty to an

indictment in April, or early part of March,—I had him plead guilty to all three indictments. I advised him to, and he pleaded guilty before Judge Wilkerson. At that time I did not even get to see Mr. Glasser. It was at noon time and Mr. Glasser was not in. I came in with Slesur without any prosecuting attorney here at all, and he pleaded guilty to all three indictments. Mr. O'Sullivan acted as clerk.

Cross-Examination by Mr. Ward.

Q. Mr. Anderson, when did you become so ill that you were confined to your home? Do you recall that date?

Was it in May?

1162 A. Well, I did not think I was so much worse, but I went to a new doctor by the name of Murphy, and he told me I had to go to bed. That was May 2nd.

Q. You had some young man represent you, did you?

A. Mr. Ottenhoff. I don't know that I was any more ill on May 2nd than I was before.

The doctor told me to stay home and I got so bad, I could not move. That was May 2nd and I was confined to my home until now. Slesur had some other cases in another district, in Indiana. That is right. I wanted to clear them all up. That is right that I came in court with Slesur. It probably was on March 31, 1939.

Q. Your young man was here with me when we disposed of these cases. You don't know about that?

A. When they were disposed of, yes.

That is right, you were in touch with me on the telephone. A plea of guilty was entered on that day. I talked to you on the telephone.

Redirect Examination by Mr. Callaghan.

Q. The sentence was not entered until June 30th, 1939, was it?

A. Are you talking about Slesur?

Q. Yes.

A. It was some time like that.

(Witness excused.)

RALPH SNYDER, was called as a witness on behalf of the defendant Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Ralph Snyder. I reside on Asbury Avenue, Winnetka. I am a lawyer. I specialize in the patent 1163 field. I know the defendant in this case, Daniel

Glasser. I have known him for at least fifteen years, probably a little longer. We do have mutual friends and acquaintances. We have been in the Aviation Post of the American Legion, and during that time, our meetings—

The Court: The question is as to his reputation, his honesty and veracity.

The Witness: A. Yes, sir.

Mr. Callaghan: I want to show the association, and what he bases his opinion on.

The Court: Direct the question to him and find out whether he knows.

I know the general reputation of Daniel Glasser prior to September 29 for honesty and integrity and the law abiding system. It was good.

Cross-Examination by Mr. Ward.

I do want to state that I met Mr. Glasser in connection with some legion Post.

Q. All right. Did you?

A. I was just saying I suppose we had luncheon together—

Q. Did you, please—did you meet him in reference to some Legion Post?

A. Yes, sir.

The Aviation Post. He held some office in that Post.

Redirect Examination by Mr. Callaghan.

He held a position of commander, the highest office in the Post.

Recross Examination by Mr. Ward.

Q. That is the highest office in any Post, isn't it, any Legion Post?

1164 A. I have only belonged to one, but I assume so.

Q. You know so, don't you.

A. No, sir.

The Court: You should know so.

Mr.-Ward: That is all.

The Court: That is the highest office, is it not?

The Witness: A. Post-Commanders, it is, if they have served as commander in the Post. Both Mr. Glasser and I have occupied that position, but whether other positions are any higher ones, I don't know.

(Witness excused.)

ROBERT G. DENK, was called as a witness on behalf of the defendant, Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Robert G. Denk. My business is National Bond Investment Company. I reside at 169 North Le-Claire.

Q. You say National Bond Investment Co., in 1936, at that time it was connected with General Motors Corporation?

A. General Motors Acceptance Corporation.

I did, at that time, have some negotiations with Mr. Glasser with reference to a Buick automobile. I know Mr. Daniel Glasser. Mr. Glasser did, at that time, buy an automobile, a '36, I think, 61 Buick Sedan, from the Buick Motor Car Co. I think 2100 Calumet Ave., in Chicago.

Q. Did a man by the name of Yarrío have anything to do with that?

A. I never heard of Yarrío.

1165 *Cross-Examination by Mr. Ward.*

That was in 1936. It was a Buick car. That is all I know about it.

(Witness excused.)

FRANCES BORNHORST, was called as a witness on behalf of the defendant, Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Frances Bornhorst. I live here in Chicago. I am a stenographer. Back in the year 1938 and '39, I was employed by Mr. Roth, in his office, doing stenographic work.

Q. Calling your attention to the month of May, and the date, May 2nd, 1938, do you recall him preparing for trial in the case of Hodorowicz, Swanson and Dowiat?

A. I could not say for sure. I don't exactly remember the names of these defendants.

Thereupon defendant Roth's exhibits Nos. 182, 183, 184 and 185 were so marked.

I did, on the second day of May, 1938, prepare these three exhibits, Nos. Defendants' Exhibits 182, statement of Clem Dowiat, 183, statement of Swanson, on May 2nd, and No. 184, Anthony Hodorowicz. I did write them on my typewriter on that date. I did write them from the stenographic notes I took on that date in this notebook, which is marked Defendant's Exhibit 185.

The Court: May I see the exhibits, please?

Mr. Poust: Q. Are the typewritten statements true and correct copies of the notes you took on May 2nd, 1938, at Mr. Roth's office?

A. They are, to the best of my ability.

Q. Was it the custom of Mr. Roth while you were 1166 employed there, that when defendants came in and they prepared for trial, he dictated these statements while the defendants or witnesses were there, or immediately after they left the office?

A. He always did.

Mr. Poust: We now offer the four exhibits in evidence. She said she took the notes on the 2nd of May, 1938.

The Witness: I can read some of these, if you would like me to.

The Court: A statement of Elmer Swanson and one of Anthony Hodorowicz?

Mr. Poust: And one of Clem Dowiat.

The Court: Do you know what you are reading from?

The Witness: A. I mark my books, this is marked from April 30th, to May, so that it was during that time.

The Court: Go ahead and read it.

A. Statement of Anthony Hodorowicz, May 2nd, 1938. Anthony Hodorowicz will testify he is twenty-seven years of age, married, has one child; and he is tinsmith by trade for the past eleven years and is now employed and has been employed for the past nine months prior thereto, was employed by the state of Illinois—

The Court: That is sufficient.

(Thereupon Defendant Roth's Exhibits, No. 182, being a statement of Clem Dowiat, dated May 2nd, 1938; No. 183, being a statement of Elmer Swanson, dated May 2nd, 1938; No. 184, a statement of Anthony Hodorowicz, dated May 2nd, 1938, and No. 185 being a stenographic notebook, were offered and received in evidence and made a part of the record herein.)

Mr. Poust: Any cross-examination.

The Court: What system do you use, Gregg?

The Witness: A. Gregg, yes, sir.

The Court: By whom are you employed now?

A. John F. Ryan.

Mr. Ward: Your Honor, seeing no erasures, we will not make any objection. It is very neat work.

Mr. Poust: She is a good stencographer.

The Court: If she can read back her notes after 1167 a couple of years, she is very good, I will say. They may be admitted.

(Whereupon said documents, so offered and received in evidence, marked respectively DEFENDANTS' EXHIBITS 182, 183, 184 and 185, are hereby made a part of the record herein.)

(Witness excused.)

VICTOR E. LA RUE, was called as a witness on behalf of the defendants Kretske and Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Victor E. LaRue. I live at 9716 South Winchester Ave., Chicago. I have been practising law since 1922. At one time I held a position of honor and trust in this building for seven and one-half years. The

position was Assistant United States Attorney to George Q. Johnson of Chicago. I know the defendant, Norton Kretske, for approximately seven years. I know his general reputation as to honesty and integrity and a law-abiding citizen, prior to September 29, 1939. It was excellent.

The Court: With whom have you discussed it?

The Witness: A. Your Honor, I am in this building almost daily, and have been since 1932, when I left the District Attorney's office. I think I have discussed repeatedly, not only Mr. Kretske, but every member in the office, either with the members or with other attorneys in the office.

Q. Who was the last one you discussed it with?

A. I think the last one I discussed it with was my former associate, Captain Waugh.

1168

Cross-Examination by Mr. Ward.

I discussed his reputation with Captain Waugh at various times. The last time I would say yesterday, in his office, which adjoins mine, at 208 So. LaSalle St.

Q. Did you talk about him being under indictment?

A. Yes, we talked about the situation generally.

I did not say how long he was under indictment. I did not know I was going to be a witness today. I just walked in the courtroom now. I had talked, generally, with Mr. Kretske and Mr. Glasser as to whether I would testify to their good character, if I were asked to. I do handle criminal cases.

Q. When did you handle one last?

A. It has not been so recently.

Q. It has been quite a while, hasn't it?

A. I think the last case I defended here was a narcotic case.

It is not true that I am a civil lawyer and do work with Receiverships. My work is not mostly civil. Now, it is principally civil. Most of my work now is sometimes being appointed as receiver.

In the past few years, I have only handled an occasional criminal case.

Redirect Examination by Mr. Callaghan.

I have known Daniel G. Glasser only since he worked in the building here, some time in 1935 or thereabouts. I left here in 1932.

Q. Do you know the general reputation of Daniel Glasser for honesty, integrity and a law abiding citizen?

A. I don't think I am qualified to testify as to his reputation. I have talked with quite a few other people about it, and I know what other lawyers say about him.

Q. What is that?

1169 A. He is honest and has been a good prosecutor in this court.

Recross Examination by Mr. Ward.

I have discussed all the boys in the office. I did not overlook Mr. Glasser.

Q. You did not know anything about him?

A. Only in the building.

I have never handled any liquor cases with Mr. Glasser. (Witness excused.)

ALFRED E. ROTH, one of the defendants herein, a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Alfred E. Roth. I reside at 5528 N. Kenmore Ave., Chicago, Ill. I have resided in Chicago all my life. I am forty-five years old, and married. I was born in Chicago and have lived here all my life. I attended Grade school here in Chicago, Joseph Medill High, Metropolitan Business and Kent College of Law. I have been practicing fourteen years. My office is located at 10 No. Clark St. at the present time. Before I was a lawyer I was an accountant. I have specialized in the field of law. I have followed the Federal practice, civil and criminal, both trial and Appellate work. The greater portion of my business comes from clients and lawyers.

Q. Can you tell the Court and jury what the approximate percentages of your business from other lawyers are?

A. I would say just as much from lawyers as from clients; in fact, more from lawyers.

1170 Q. Fifty per cent or more comes from other lawyers?

A. Yes, sir.

Q. You are a lawyer's lawyer, are you?

A. Well, they think I am.

That has been true during the entire period of my practice here in the Federal Building. I believe the first time I actually got acquainted with Daniel Glasser was during the time that I was engaged to argue a motion for a new trial and prepare a record in connection with an appeal in the case entitled *U. S. vs. 151 acres of land*, which Mr. Baker engaged me to appeal. I came in—I think it was in the fall of 1937. The reason I wish to qualify that, I may have appeared on some little matter and don't recall it. I don't think I did. I knew he was an Assistant District Attorney here in this building prior to that. My best recollection at this time is that the time I am fixing now is the first case in which I appeared, in which he was the attorney representing the Government. I never at any time had any occasion for Mr. Kretsko to oppose me in any matter. I had no dealings with him in the office other than seeing him. I did not know him before he became Assistant District Attorney, but I knew of him, I knew of his father. I first became acquainted with him in this building while he was an assistant. I had no matters in which he and I were engaged professionally until after he was no longer an assistant, almost a year after he was out of the office.

I know Mr. Horton, I believe maybe for six or seven or eight years, from being around in this building, engaged in the business of furnishing surety bonds for defendants. I first met the defendant, Louis Kaplan, I believe in June, 1939. Last year, after he was indicted in connection with some alcohol violation, I filed my appearance in the case and later withdrew for the reason I could not get any fees. Mr. Hess inherited Mr. Kaplan. That
1171 is the only case in which I met Kaplan. That is all, as client or otherwise. That was last June.

I believe the first time I met Mr. Bailey, he was in the Commissioner's Office when I was vigorously opposing a continuance the Government was asking. I believe it was January the 26th, 1938, in the case of *United States vs. Swanson, Hodorowicz and Dowiat*. He was in the Com-

missioner's office when we had a controversy concerning my opposing continuance. The case of Swanson, Hodorowicz and Dowiat. I believe I was engaged in that case about a day before the 26th, or maybe the morning. They were sent over to me from Mr. Kretske's office. I was asked to represent them before the Commissioner. We went over there on the day of the 26th, I believe, January 26th, 1938, and I answered ready. I had gone over the evidence, the proposed testimony, and made a rough diagram of the place where they were arrested, and was prepared to go ahead and demand a hearing. The case had then been pending thirty days, I believe.

Q. When did you go over there with them and make up this diagram?

A. At a later date, Mr. Poust, when we were preparing for trial in the District Court.

Q. My error. Tell us what happened that day in the Commissioner's office.

A. When I appeared and the case was called, I answered ready, and the Government, represented by Mr. Glasser, asked for a recess. They invited me into the Commissioner's chambers. I believe the Government's representation was Mr. Bailey and Mr. Ritter and Mr. Glasser. They asked for a three week continuance. I said, "I am opposing it. I don't think it is a request in good faith. If it is not a matter of having your witnesses, I am willing to have it go over for two or three days. I think it is an attempt to rob me from having my hearing, unless you promise you will not indict anyone."

1172 They all got together and we lost, they got a three weeks' continuance. We came back on the continued date, February 16th, 1938, and in the meantime I might say that a few days before that, an indictment had been returned. I believe the defendants had given bond; so when we appeared before the Commissioner, the Commissioner dismissed the case because he had lost jurisdiction. An indictment had been returned and a bench warrant issued. He was no longer concerned with the case.

Q. You say that at the end of the three weeks' continuance, the case was dismissed?

A. Because an indictment had been returned and the very thing happened that I expected.

The next thing, we received notice, I believe, prior to some time along in March. The notice stated to the de-

defendants that they would be called for plea and arraignment, to plead to the indictment, I believe, March 28th, 1938. I appeared with the defendants and entered pleas of not guilty, and asked leave to file motions, I would say, leave to file within ten days without prejudice to my plea. I don't know if the jury will understand that or not, but if you want to make a motion and you don't make it before you plead, you lose your rights. I always reserve that. The case was set for trial May 5, 1938. Mr. Glasser was the prosecutor in this case. He represented the Government before the Commissioner when I attempted to go to trial, I believe March 29th, 1938, was the day of the arraignment.

Q. What happened next?

A. I called my clients, informed them they better get ready for trial. I believe it was on May 2nd; in fact, I am certain since I looked in the file and saw the date. My recollection was refreshed by the stenographer's notes.

Exhibits 182, 183, and 184 are the statements I 1173 took from the defendants on May 2nd, 1938, when I was preparing for trial. The case was set for May 5th. We were preparing on May the 2nd. The defendants, Hodorowicz, Swanson and Dowiat were there on that occasion. At that time I prepared that sketch from the information they gave me. I believe they marked the place in red pencil, where they were standing when they were arrested. These are statements about what they knew of the case. I was dictating to the stenographer. She took it down, transcribed her notes, and prepared these statements. Exhibit No. 38 is the sketch I prepared from the information they gave me on that occasion. They gave me the material from which I was able to draw this sketch of Stony Island Avenue, and the various buildings, after they marked with a red pencil, where they were standing at the time they were arrested. I marked that Dowiat and Hodorowicz were arrested here, and where the car was parked.

Their defense is contained in the statements. They claim they were innocent and two of them were arrested on the street while they were in the vicinity in connection with the purchase of a second hand automobile. Swanson stated,—I believe at the time, he was not arrested, he surrendered after the Marshal went to his home and attempted to execute an arrest by warrant. He came down and surrendered and explained to me a day or two prior,

that he had a controversy with some agents when he got away from them or jumped out, or something like that. The statement will contain all the facts.

Mr. Poust: At this time, I don't believe this diagram has been offered. It was identified and marked early in the trial.

(Thereupon DEFENDANT ROTH'S EXHIBIT NO. 38, being a diagram of the vicinity of 69th and Stony Island Avenue, was offered and received in evidence, and made a part of the record herein.)

Nothing else happened that day in the preparation for trial, the clients left. On the morning of May 5th, they appeared in my office and we came down to the

Federal Building and went in Judge Woodward's 1174 court room and took a seat and waited for our case to be called. The call was completed, our case was

not called. Well, we waited until the call was ended, and went to the Clerk's Office to investigate and check the docket entries. I did check the docket entries. I found there was an entry on April 28, I believe, 1939, which read: "Stricken from the call with leave to reinstate." 1938. I turned to my client and said, "That is strange. The case has been stricken—I stated, "This is a surprise to me. I cannot understand it. I know nothing about it." I believe Swanson said, "I don't know anything about it, either." I said, they might as well go home, so they left, and I left.

Q. Did you later learn anything more about that case?

A. I believe I ran into Mr. Glasser shortly thereafter, and I said: "Mr. Glasser, what happened to that Swanson, Dowiat, Hodorowicz case? I appeared here on May 5th and waited for the case, and it was not called; and upon checking the docket, I learned it was stricken from the docket with leave to reinstate."

He said that was the wish of the Government, and that is what they wanted to do. I said, "Very well, all right."

Q. Now, did you see Mr. Glasser in connection with this matter other than in the Commissioner's Office or in the court room?

A. I never had any further discussions at all in connection with that case. I was only engaged to try it.

I most certainly did not ever, at any time, conspire with Daniel Glasser or with Mr. Kretske or with Mr. Horton, as charged in Count 2. I never did give Mr.

Glasser any money or any one else. I never did attempt to influence him to do other than his own duties. I have told you all about the Hodorowicz, Dowiat, Swanson case.

I did represent a claimant by the name of Rose Vitale in a libel case here in this court, I believe I filed it in September of 1938. I did hear the testimony of Agent Dowd. I filed an answer and Claim in that case after first filing the necessary papers in the Alcohol Tax 1175 Unit. Mrs. Vitale was in my office, I took her acknowledgment. She claimed she owned the car, and I filed an Answer,—the necessary papers which required them to remove her to the District Court for filing a libel I filed an Answer and Claim which came up before Judge Barnes.

Q. What happened next?

A. I believe I made one or two appearances with my witnesses, I believe, on December 23, 1938, when the case was called before Judge Barnes, United States versus 1 Chrysler Sedan, I answered ready, and I believe the Government answered ready. Mr. Glasser stepped up to the Bar and made an opening statement. I believe he read it from the Agents' report. I believe Judge Barnes asked one or two questions. He wanted to know if any alcohol had been found in the car. I stated, "If the Court please, they stated what the Government expects to prove here. I don't think they can make out a case upon the opening statement. I move for a finding for the Claim." A little discussion was had between Court and Counsel, and Judge Barnes decided in favor of the claimant and ordered me to prepare a Decree and ordered the car returned. The facts briefly were—the facts briefly stated before the court were the same as Judge Barnes testified here yesterday in substance.

Q. Part of that report was read to Judge Barnes?

A. All of it, I believe, as I heard it here yesterday.

Q. Is there any other information on that case of interest to this Court and Jury at this time?

A. I don't think so. It was a full and complete hearing before Judge Barnes. He did not care to hear any evidence after he heard the statement of fact.

I heard the testimony of those two Wroblewski brothers, and Alexander Campbell. I first met Ed Wroblewski in September, 1938, about the middle or toward the end of September, 1938.

Q. Had you ever seen or heard anything of him before that time?

1176 A. I never saw the man in my life until he walked into my office.

Q. Your office at 10 North Clark Street, Chicago?

A. What happened on that occasion?

A. He said to me: "I have been indicted in Indiana, together with my brother. I have a case coming up there, and we are due to appear there any day. I think we gave bond to appear in November for trial. I want to talk to you about representing my brother and myself. I said to him "Where were you arrested? Here in Chicago?" He said: "Yes." I said: "Did you give bond here in Chicago for your appearance in Indiana?" He said: "Yes." I said, "Well, where did you make your bond?" He said: "Up before the Commissioner." I said: "When?" He said: "Somewhere along in May of that year before the Commissioner." I said: "What happened on the hearing?" He said: "They told me I was indicted, and they had an indictment in which they claim my brother and I, and two others were in some conspiracy." I believe he said he was told the contents about his brother having 30 gallons of alcohol back of their garage at the premises where he and his wife resided. He also said: "I can't understand that indictment. My brother has been punished for that. Isn't that a double jeopardy? He did four months for that about a year ago." I said: "I will have to look at the indictment. I can't conceive of indicting him twice for the same thing. I will look into it. You say you gave a bond and had a hearing. I will examine the file and see more about the indictment." We had a discussion about fees. He did not pay me any fees that day, he was to come back in a day or two after I examined the indictment and looked into the case.

Q. What did you do next?

A. I went over to Commissioner Walker's office on the 8th floor of this building. I went up to Mrs. Kelly, his secretary, and said: "There is a removal case pending against William Wroblewski. Will you please get that file?" She did, and I looked at the file.

Mr. Poust: Mark this, please, Exhibit 186, and
1177 mark these documents A, B and C.

(Documents so marked.)

Q. I hand you an envelope marked Defendant Exhibit 186, a document purporting to be a certified copy of

indictment marked Defendant's Exhibit 186-A; copy of the cognizance of bail, 186-B; and the other document, 186-C, and ask you if those are the documents you examined at Commissioner Walker's office on that day?

A. Yes, sir.

I was at the Commissioner's office somewhere along, I should judge, maybe the 20th and the 25th, about the last week of September, 1938.

(Thereupon documents were offered and received in evidence, marked respectively, DEFENDANT'S EXHIBIT 186, 186-A, 186-B and 186-C and made a part of the record herein.)

I believe on that day I made a mental note or made a little memoranda concerning the contents of the indictment, and went back to my office. My client Edward returned a day or two later. I had a conversation with him. I said: "I examined the indictment, and also the file. You have to appear at the November term of the District Court of the Northern District of Indiana; and I also read the indictment." I said to him, "You are right, about that containing the charge as one of the acts"—this conversation was with Edward Wroblewski. I said "You are right about the charge containing the allegation that your brother—it is claimed your brother possessed 150 gallons of alcohol at 10505 South Wallace Street."

In his first interview, he told me his brother was arrested under the name of William Alfred Burba; and in the second conversation, I said "It is also true your brother was charged with the identical thing in the Northern District of Illinois, only that was for possessing the alcohol and was sentenced to three months and paid a fine. That is also true of the identical act."

He says, "Isn't that double jeopardy?"

I said, "Well, it happens they do funny things in 1178 Indiana. Technically they can do it."

He said, "Can they punish a man twice for the same act and conduct?" I said, "If they call it some other offense, they can do it. They can indict you for not giving bond, or for having a distillery. If the Government would choose to prosecute, they could give a different meaning.

Mr. Ward: Is this the answer to the last question?

A. I was trying to explain to Edward. Maybe we lawyers talk too much. I am sorry.

Mr. Poust: Now, did anything more happen on that day?

A. Why I discussed the other defendants with him, this Del Zoppo and John Thornton. He said, "I understand this man Del Zoppo got four months in Indiana." I said, "What about this man Thornton?" He said, "He was out on probation and when he got caught with the load in Indiana, his probation was revoked." I said, "What about you with the four-fifths of a gallon they claim you had?" He said, "I took some bottles from the tavern and poured them into a jug and took it home. When I told them I poured from the partially full bottle and explained that was the reason there were no stamps on it, they said I could go on home." I said, "I cannot conceive of a prosecutor throwing together a conspiracy based upon such facts. I have never dealt with such a case." I said, "I will talk to the prosecutor," and we agreed on a fee. He gave me a \$50.00 retainer. We finally agreed I would represent his brother and himself for \$250.00. He said they were in very straitened circumstances and would have to pay it in installments. I believe he paid \$50.00 that day.

Q. What happened next?

A. I believe it was on September the 30th, 1938, I drove down to Ft. Wayne, and took my wife along for the trip. I did drive down in a car. I left along about noon, and arrived about closing time. I got off the road a little bit in going to Ft. Wayne and got lost and was late arriving at the office. I got there about closing time 1179 and missed the United States Attorney. I had a conversation with someone there, I asked for Mr. Fleming. I asked for the United States Attorney. I did not know Mr. Campbell was there. I asked who was his assistant, and they said Mr. Campbell. I went back to the Hotel; had dinner with my wife, and tried to reach Mr. Campbell. They told me he lived in Ft. Wayne. I telephoned him, or rather I telephoned his home, which I obtained from the telephone directory. I don't recall whether somebody told me where he lived—but anyway, I did telephone him. I was unable to get him, and left word for him to call me at the Keenan Hotel. I did receive a call from Mr. Campbell. He said he was in his office working. I told him I would like to talk to him, that I had gotten down too late to transact business during office hours, but if he would be kind enough to see me, I would come down as I wanted to leave in the morning. This was over the telephone. I went to the

office and had a conversation with him. I said, "Mr. Campbell, I represent Edward and William Wroblewski. They have been indicted in this District. I don't know whether you are fully informed with the facts concerning the indictment. I cannot conceive of a prosecutor presenting a case to a Grand Jury in a conspiracy of this kind where all defendants have been dealt with a year before." He said, "I don't know much about the case. It is late now and I cannot go in the files." He said he was busy and his secretary takes care of that. I explained it in detail without going through it all.

I told Mr. Campbell what Wroblewski had said. I said: "We don't do things like that in Chicago. I never heard of a prosecutor in Chicago having an indictment of that kind returned." He said he did not know much about it, but he would look into it. I said I was very anxious to dispose of the case, and if he could make some effort of nominal recommendation on a plea, we might dispose of it without the necessity of a trial, if we found that was true. I said "The days of five hundred and one thousand dollar fees from bootleggers are gone. I don't know whether I will even get the fee that is agreed on. If 1180 I can dispose of it on a plea, if what I say is true, perhaps we can work it out." He said he would look into it. I said, "Will you be kind enough, if you have an extra copy of the indictment, to mail it to me and let me know when we are to appear in court? I understand we are to appear at the November term at the Hammond division." He said that was right, and I did receive a letter a week later.

Q. I show you what purports to be a letter signed by Alexander Campbell, dated October 7, 1938, and ask you if that is the letter?

A. With the exception that I put some pencil notations on it.

Q. Did he send you a copy of the indictment at that time?

A. Yes.

(Thereupon DEFENDANT ROTH'S EXHIBIT NO. 137, being a letter addressed to Alfred E. Roth, signed by Alexander Campbell, dated October 7, 1938, was offered and received in evidence, and made a part of the record herein.)

Thereupon Exhibit 137 was read.

I substantially have covered what occurred there be-

tween Mr. Campbell and me. We may have talked about some immaterial things.

Q. Now did you say there on four separate occasions there that night, either in his office, or outside the building, that: "If you can do something on this case for me, I will raise my fees to \$500.00 or \$1,000.00 and give it to you for yourself, or for campaign contribution?"

A. No, sir.

I saw him again that night after I left the building. When I left the office I looked around in the building. I had occasion—if you will pardon me, to use the men's washroom. I was in the building ten or fifteen minutes. I walked out, I don't know much about the City of Ft. Wayne. I was standing on the stairway, and just got out of the building, and someone came almost alongside of me, and there stood Mr. Campbell. I believe I said: "Mr. Campbell, which way is it to the Keenan Hotel? I left my wife there and I am in a hurry to get back." He 1181 turned the direction and said: "It is off that way," and said "Goodnight" and went on. There was nothing further in the way of conversation there between him and me that night after we both got out of the building. He went off in his direction and I went off in mine. I did not see him there the next day before I came back to Chicago. I left the next morning for Chicago. I got this letter, and the indictment, about a week after I got back. I did later try that case.

Q. Did you do anything, make any more trips to Indiana before the case was tried?

A. Well, yes, I went there on plea and arraignment. I had a conversation with Mr. Campbell at that time and asked if he would consider going into the matter. He said that what I said was substantially correct. I said: "Would it be agreeable to you to make some sort of recommendation, if you must have your ~~correction~~? Perhaps my clients would be satisfied and we could have a little money and it will be agreeable to everybody." He said he was not disposed to do that. I said, "How about going in and talking to the Judge?" He said, "No," and I said, "I would like to have the Judge hear the story, but I will not go to the Judge myself. I never have and never will, without the other side. I guess the only thing left for me is to try the case." So I prepared and filed a petition to suppress evidence. There is a constitutional question which was important and involved, so I tried the case. The case

came up for trial somewhere along about December. I believe it went to trial in December, in Hammond, before Judge Slick. It went to a jury. We prepared for trial in my office a week before we went to trial, which was the first time I met William Wroblewski. His brother brought him down. I should judge we spent two or three hours, maybe, and prepared it and went to trial. There was a conviction, and on that day I entered a motion for a new trial. It was set for argument at Ft. Wayne before Judge Slick. The motion was over-ruled. The judge imposed sentence. At that time I told the judge I would file 1182 notice of appeal, and he agreed to admitting the defendants to bail and fixed the bail. I subsequently prosecuted an appeal in the Circuit Court of Appeals. William received a sentence in the Northern District of Indiana of twenty months; Edward received one year and a day. The other defendants were given probation. I did present an appeal to the Circuit Court of Appeals. I think I received notice from the clerk of the Circuit Court of Appeals on June 30th or July 1st, advising me that the conviction had been affirmed.

Q. I show you a pamphlet entitled "Appellant's Brief, William Wroblewski and Edward Wroblewski, Defendants," and ask you if that is the brief which you prepared and filed in the Circuit Court of Appeals for those two men?

A. That is one of the required number necessary to file in the Circuit Court of Appeals.

(Thereupon the said brief, marked EXHIBIT 187, was offered and received in evidence, on behalf of the defendant Roth, and hereby made a part of the record herein.)

Q. Now, did you meet Mr. Bailey in connection with this prosecution, during the trial or during the time the case was on appeal?

A. He was there during the trial. He also testified very briefly, simply that he interviewed the witnesses and prepared the case.

Q. Did you and he have any conversation about the series of prosecutions against the Wroblewskis?

A. I met him on the train, bound for Chicago. He said Edward was going to have another indictment in the Southern District of Indiana, but there was some immaterial discussion concerning the case, a post mortem.

Q. Was Edward indicted down there later in Southern Indiana?

A. I was informed by Mr. Ralph Gutsell in Chicago—

Q. And who was on the stand here yesterday?

1183 A. Yes, sir. Pardon me, I wish to correct that.

Eddie came to my office,—Mr. Edward Wroblewski came to my office and told me he had been indicted in the Southern District of Indiana for conspiracy to violate the alcohol laws. He said, "This is triple jeopardy, isn't it?" I said, "Who is your lawyer?" He told me he had engaged Ralph Gutsell.

Q. Just pardon me. In the case he had here, you did not represent him in this District?

A. No, sir.

Q. Who was his attorney there, if you know?

A. Only from what I learned in the case.

Mr. Ward: May I have the date of the triple jeopardy?

A. Along about March or April.

Mr. Poust: Q. Did you know whether Mr. Bolton was the attorney who represented him on the case here?

A. Not of my own knowledge, only what I learned in the preparation of this case.

Q. Go ahead.

A. I said that Mr. Gutsell knew me and I was going to call him. I said I would be glad to have him call me. So when he talked to me, he said he wanted to examine the indictment for the Northern District of Indiana, with a view of preparing a plea of jeopardy. I said, "I will be very glad to do what I can to help you." He is a good friend of mine. That was about the substance of the conversation.

Thereupon it was stipulated by and between the United States Attorney and Attorney for the defendant Roth that the United States Attorney for the Northern District of Indiana, acting by and through his assistant, Alexander Campbell, forwarded to the United States Attorney for the Northern District of Illinois, for institution before Commissioner Walker the Wroblewski removal proceedings, which was later instituted before Commissioner Walker, and the file of which has been received in evidence here.

Q. Now, Mr. Roth, did you go down to Fort
1184 Wayne more than once before the trial of the Wroblewski case at Hammond in December, 1938?

A. I am not certain, Colonel, whether I made a trip

before we finally went to trial in November or not. My best recollection is that I might have seen Mr. Campbell on one more occasion, when I discussed with him the possibility of disposing of the case on a plea of guilty and some recommendation of a nominal sentence, in view of the fact one of the boys had previously served some time for the same acts and conduct.

We did not ever come to any agreement as to a plea of guilty, he said he was not disposed to make any recommendation and his attitude was one of going to trial. I absolutely did not, on either of the occasions that I was down there, have any discussion with Alexander Campbell about the return of a No Bill. There was an indictment pending at that time. I was advised by Mr. Ralph Gutzell, who represented Eddie Wroblewski in the Southern Indiana District case, that he entered a plea while the appeal in the Northern Indiana case was pending before the Circuit Court of Appeals. I was informed by Mr. Ralph Gutzell, along about May 6th or 7th, it was a couple of days after the sentence was imposed that Judge Balzell had authorized overruled a Plea of former jeopardy, and had imposed a sentence of 18 months to run concurrently, and that is, together with the sentence that was imposed on the Northern District of Indiana, and which case was then pending on Appeal in the United States Circuit Court of Appeals for the Seventh District. I received notice from the Court of Appeals here, I believe, along the last of June or first of July, that the conviction in the Northern Indiana case had been affirmed. That was in 1939. I next telephoned or wrote, I don't recall just how I communicated with William Wroblewski, because I knew that Edward was then in the Penitentiary at Lewisburg. He was taken into custody on May 5, 1939, and immediately began to serve that sentence that was imposed in the Southern District of Indiana. So I then communicated with his brother, who was then at large on an Appeal bond, and had him come to my office, and I had a conversation with him.

Q. All right, what took place at that time?

A. I said to him that I had received notice of the affirmance of the conviction, and I said it would have been futile to have one for Edward anyway, in view of the Southern District sentence, and I believe we both walked over to the Clerk of the Office of the United States Circuit Court of Appeals, as I was very much interested

in reading the opinion, and I told him there might be a possibility of filing a Petition for re-hearing. And we both walked over, and I examined it and discussed it with him, and we came back to the office, and then I said to him that Mr. Gutsell had been in communication with me, and said by all means to be sure and see that the commitment—that is a paper by which one is taken into custody by a Marshal to serve a sentence,—was issued at once if the conviction is affirmed, and get it down to the penitentiary so they would both be running at the same time, together, so he would be serving both sentences at the same time. And I also said to him when the Mandate comes down—and there is a rule of Court that the Mandate does not go down for twenty days. And that I would arrange for him so he wouldn't be picked up by the Marshall at some ungodly hour at his home, and I would notify him further. And we had some further conversation during which he had made some statements about the Government Agents having been out to see him, and were trying to make deals and promises, and that they were after Glasser and Kretske, and they could keep him on the street. This is a conversation with Mr. William Wroblewski.

Q. Is there anything else about that now that you have not completed at all?

A. Oh, only that Mr. Bailey had been out to see him, and said he would keep him on the street, the same as he was doing for the Hodorowicz boys if he would stretch a point or two for him. That was the conversation,

I believe, at that time, and on many other times, 1186 and I stated I would suggest you not discuss anything with any Agents, you are apt to implicate yourself in some further difficulties.

Q. Now, did anything happen in connection with this case before you went to Fort Wayne again?

A. Not that I recall.

I went to Fort Wayne again on July 10, 1939. I drove to Fort Wayne. I was accompanied at that time by Mr. Norton Kretske.

Q. How did he happen to go with you?

A. As I recall, it was on a Monday, and it was a nice warm day in July, and I didn't feel much like working, and I wanted company, and I had seen Mr. Kretske in connection with some matter, I don't recall, in the morning; and I said to him, "I am driving to Fort Wayne

this afternoon. Would you like to drive along?" And he said, "It is a good idea. I want to see a lawyer in Plymouth, and that would give me a chance to stop and see this lawyer." And I think we both left shortly after lunch, we were a little late in getting started. I took care of some matters at the office.

I went down for the purpose of seeing that that commitment would issue promptly when the Mandate came down, and that it would be sent to the penitentiary so that Edward could be serving both sentences at the same time. That is right, he wouldn't get any credit on the second sentence until the commitment arrived at the Institution. I believe we arrived at Fort Wayne shortly before closing time. It was very close to five o'clock. I recall that. We left here, about one, something around that time. We arrived in Fort Wayne and went to the United States Attorney's office in the Post Office Building, and I inquired for Mr. Campbell, and I was told that he was expected momentarily, and we waited for him. He did finally arrive, it was close to about five o'clock. He greeted me, and I greeted him, and I introduced him to Mr. Kretske, the former Assistant United States Attorney, and he had us wait a moment or two, and he invited us into Mr. Fleming's office. Mr. Fleming is the United States Attorney.

1187 We had a discussion about the Appeal, and he said he had an Opinion on his desk, and we talked about the case, and he had made some statement he was afraid of it, he thought he was going to lose it, the material discussion of the case, and I finally said to Mr. Campbell, "I am here to see that that commitment issues promptly, because there is a judgment entered in the Southern District of Indiana which shows that the sentence in the Southern District serve concurrently, together with the sentences of the Northern District, and I am anxious to see that you get the commitment out as soon as the Mandate comes down, and send it to the penitentiary so Edward can be getting credit for the time he is serving both of his sentences at the same time. And he said, "Why, we will have to bring him back here for re-sentencing." I said, "I never heard of anything of that kind." I said, "We don't do that in Chicago, when a conviction is affirmed the Marshal gets in touch with the lawyer, and we surrender our person at the appointed time and place." I said, "It is impossible, you can't bring the man here

from the penitentiary to re-sentence him." He said, "That is the way we do it down here." I said, "Then I will probably have to go to Judge Slick and ask for an Order directing the Clerk to issue the commitment, and that it be sent to the penitentiary so that the Warden may have it, and the man get credit for his time in accordance with the Order of Court of the Southern District of Indiana." At that moment I turned to Mr. Kretske, and said, "Did you ever have such a situation? How did you handle it?" He said, "Well, we usually worked out matters of foreign jurisdiction over the telephone." I believe that is what he did say. Then he did say, "I will check that up, the question of that concurrent sentence." I said, "I wish you would." And his secretary stepped out for a moment, and he called her in, and directed her to write to the Clerk of the Southern District, and make inquiry as to whether or not such a judgment was entered.

Q. Did he later write to you about the matter?

A. I received a letter some four or five days later.

1188 Q. I show you a letter dated July 15, 1939, marked Defendant's Exhibit 135. I think that has been identified here by Mr. Campbell.

A. Yes, sir, that is the letter I received.

(Thereupon DEFENDANT ROTH'S EXHIBIT NO. 35, being a letter addressed to Alfred E. Roth, signed Alexander Campbell, dated July 15, 1939, was offered and received in evidence, and made a part of the record herein.)

Thereupon the said EXHIBIT NO. 135 was read as follows:

Mr. Poust: "In the Department of Justice, United States Attorney, Northern District of Indiana, Fort Wayne, Indiana, July 15, 1939. Mr. Alfred E. Roth, Attorney at Law, 10 North Clark Street, Chicago, Illinois. Dear Sir: In re: United States versus Edward Wroblewski. Please be advised that Mr. Alfred C. Sogeneier, Clerk of the United States District Court for the Southern District of Indiana, advises that on April 29, 1939, the above named Defendant fixed his Plea to Guilty, and on May 5, 1939, was sentenced to 18 months, said sentence to be served in the United States Northeastern Penitentiary at Lewisburg, Pennsylvania. Fined \$500.00 without costs, which said sentence was to run concurrently with the sentence of the Northern District of Indiana. Yours very truly,

James R. Fleming, United States Attorney, by Alexander H. Campbell, Assistant United States Attorney."

Q. All right, now, what else happened on that day of July 10, 1939, if anything?

A. Mr. Campbell stated something about being a little in a hurry, and he was walking towards the door. He walked from the private office of Mr. Fleming to the large outer office, which is separated by a railing between the exit door, the offices are divided into two parts, with one the inner part of the outer office, and the outer part of the outside of the railing, which is a sort of reception section, waiting section, with chairs, about four or five feet from the door.

He walked me in that general direction, and Mr. Kretske preceded me and got outside of the railing, and was standing there, and we walked arm in arm, or I may have had my hand on his shoulder, and as I was walking out I said, "Mr. Campbell, your name has been mentioned around Chicago, common gossip in connection with Wroblewski, some irregularities of some kind, and I thought I might just as well tell you about it." So—

Oh, no, sir, I did not drag him back into the inner office at that time. We were walking towards the door. Why, we were walking arm in arm, or close together. He was escorting me to the door. As I recall, some gentleman was off to a distance there, standing, and the lady who was—I don't know her name, I believe she was Mr. Campbell's secretary, she was way off to the window, standing by the window, looking out in the street, fifteen or twenty feet away. Mr. Kretske was about three or four feet in front of me, right close to the door. We had almost reached the exit door. I said "there has been some rumor and gossip around Chicago connecting you, and an Agent named Bailey was going to get a lot of lawyers and United States Attorneys and Judges, and what not, and I have heard your name mentioned, so I thought I would tell you about it.

The Court: Just right there. Who did you hear mention his name?

A. Pardon?

Q. Who did you hear mention his name before you stated that?

A. I heard it from Mr. Horton, I heard it from the bondsman.

Q. What bondsman?

A. Around the building.

Q. Well, I want to know the names.

A. Mr. Horton was one that told me.

Q. A defendant in this case?

A. Yes, sir.

Q. Who else told you that Mr. Campbell's name was being mentioned here, and gossiped around?

A. Well, I think the first one I heard it from was Mr. Ward, on one occasion said, "What are you doing down in Indiana?"

1190 Q. Wait a minute. Without mentioning Mr. Ward's name--When Mr. Campbell's name was being discussed?

A. Mr. Ward stated to me on one occasion, "What are you doing down in Indiana, seeing Mr. Campbell?"

Q. That was before you went down to see Mr. Campbell?

A. Yes, sir, well, it is while this case was under investigation.

Q. Do you contend from what Mr. Ward said to you, that you can draw the conclusion--

A. Coupled together with what Mr. Horton said.

Q. What other persons brought Mr. Campbell's name into this public gossip you are talking about?

A. I think Mr. Horton started it first.

Q. Any other persons besides Mr. Horton that would justify you telling Mr. Campbell that his name was involved in the gossip?

A. Well, I think then I talked to Mr. Kretske about it after I heard--

Q. Outside of Mr. Kretske, was there anyone else you talked to that would justify you in telling Mr. Campbell his name was being involved in this gossip about this investigation?

A. Judge, I don't recall, those conversations were around the Commissioner's office there.

Q. All right; will you state Mr. Campbell, the District Attorney, who was involved in investigating--

A. I didn't say he was involved. I said his name was being mentioned.

Q. Something more than idle gossip.

The Court: Go ahead.

The Witness: A. And I said something to the District Attorney, and he said, "Oh, we are sold up and down the street every day, we don't pay any attention to that." I

said, "We don't either, but there is talk around Chicago, so much gossip, I thought I would mention it. You can tell Mr. Bailey about it if you want to, I have 1191 talked to some of my clients, and they have told me

Mr. Bailey has been around, he has made promises, and made threats and trying to get information," and I imparted what was going on, just a little general talk, and he said to me, "Oh, I wouldn't pay any attention to that, our dealings were always honest and up, and above board."

I said, "I didn't ask you anything that was not honest and conscientious."

He said, "That is right. I will just forget about it."

And with that I didn't give any credence,—but you hear clients come and tell you, and others, and I thought I would mention it, and I did say at the time that I heard it, and I heard this around Chicago. I believe I met Glasser one time while this investigation was going on, and he said he heard he had been ordered from the court room down South by a Federal Judge for misconduct in preparation of cases. And that was the substance of our conversation.

I did not, at any time, tell Alexander Campbell, that any Judge in the Northern District of Illinois was going to have Bailey moved out of this district.

Q. What, if anything, did you say, other than this testimony you just gave to us about some Judge down South?

A. That is all that was said about any Judge.

I did not ask Campbell to pull Bailey off this case. I said, "You can tell me about this interview, if you wish, I don't care." It lasted—it was very short. One, two or three minutes, as we were walking on. I received a fee of \$250.00 in the Wroblewski case. I did not receive that all at one time. I received it in five installments. I believe he paid me three \$50.00, and one \$100.00—four or five, installments, as I recall. I did have a conversation about these fees with the Wroblewskis, I kept asking them for fees, and they said they had their jewelry in pawn, and they were having difficulty in raising money, and finally I said I would like to have that \$250.00 before 1192 trial, and they were able to give it to me, and did give it to me. I have not yet been paid by the Wroblewskis for handling their Appeal in the Circuit Court of Appeals. Eddie went to jail while this Appeal was pending. No lawyer referred that case to me. No other lawyer did any work on it, or get any part of the fee. I

really don't know how the Wroblewskis happened to come to me and employ me in that matter. I didn't cross-examine them as to why they engaged me. Mr. Kretske had nothing to do with that case.

Q. Was he present more than that once that he rode down there with you?

A. He came into my office one day while Willie Wroblewski was in the office, and we were talking, and I had a little conversation, and I said, "That is Mr. Kretske." And he said, "Is that Mr. Kretske?" And I said, "Yes." And I introduced him.

He had then been out of office as an Assistant United States Attorney, last summer, it was in July, 1939. It was two years.

(Thereupon there was offered and received in evidence as DEFENDANT ROTH'S EXHIBIT NO. 190, the Commissioner Walker's file on the Wroblewski removal to the Southern District of Indiana and made a part of the record herein.)

I think I have stated substantially the history of the Wroblewski proceedings.

Q. All right. Let us take up the case of the United States versus Paul Svec and others, Number 20783, before the Commissioner, also Number 30603 indictment before Judge Barnes. When did you first meet this man Paul Svec?

A. Paul Svec came to my office, I believe it was along in March, 1938, and engaged me to try his case which was then pending before Judge Barnes.

He was charged with possession of un-tax paid alcohol, and removing and selling un-tax paid commodities. We discussed the tax and went over the history of the case,

and I concluded it would be wise to file a Petition 1193 to suppress the evidence, and objected to the search of the truck, and he signed a Petition that he was in custody and control of the truck. Under the fourth and fifth amendment of the constitution we have certain rights involving search and seizure, unless probable cause or warrant. And I concluded that would be the right thing to do, and I appeared before Judge Barnes and asked leave to file a Petition, and it was granted, and we subsequently went to hearing on that. Mr. Glasser was prosecuting that case for the Government. After hearing on the Petition it was overruled, it was along close to the vacation time, I guess the case was set in June, and finally

was continued until October, and shortly after the opening of the term of Court we went to trial. Mr. Glasser represented the Government, and I represented Mr. Svec. I believe it was tried around the early part of November, or in October, 1938. The case was tried before a Jury.

Q. What did you do towards reference to preparing for trial?

A. We went out and took a photograph of the right-of-way of the Northwestern Railroad, and various things I found concerning certain premises and the truck. That was on the question of the search and seizure, and I prepared with the witnesses when we went to trial on the merits.

Mr. Svec was found guilty, and Judge Barnes imposed a sentence of two years there. I took an Appeal and went to the Circuit Court of Appeals. I did write a brief in the Circuit Court of Appeals.

Q. I hand you a brief marked for identification, Exhibit 191, and ask you if that is the brief you wrote for Paul Svec in the case of United States versus Sebo, alias Paul Svec?

A. Yes, sir, that is it.

(Thereupon DEFENDANT ROTH'S EXHIBIT NO. 191 being a brief in the case of United States *vs.* Sebo, alias Paul Svec, was offered and received in evidence, and made a part of the record herein.)

1194 The conviction was affirmed in the United States Circuit Court of Appeals. Mr. Glasser represented the Government in that case. Let me see; yes, I am just wondering who argued that case. I know there was one case in which another attorney appeared. I think it is Mr. Eben. I believe that was Mr. Ward's case, where Mr. Eben substituted,—Mr. Davis. I think Mr. Glasser argued this case, I am not sure who appeared on oral argument, somebody from the United States Attorney's Office. I did represent Svec on another case at this time. That was the case before United States Commissioner in the month of December, 1938. His first case was pending on Appeal in the Circuit Court of Appeals when he was taken into custody in connection with this offense before the Commissioner. It was unrelated to the case—it had no connection with the other one, whatsoever.

Mr. Svec came to my office shortly before the time of the hearing, which I think was close on to Christmas, I think it was December 21st or 22nd, 1938. He stated to

me that he had been arrested and charged with ownership of a still, I believe, on Wells Street.

I asked him to relate the facts to me, and he said he had no connection with that still, he was innocent, that he was driving by in a vehicle on Wells Street, and that the Agents were out in the process of executing a search warrant on the premises, and they observed him riding by, and pursued him, and he rode some four or five blocks, and he got out and ran, and they continued after him, and took him into custody, and he said he had nothing to do with it. I said, "Well, we will go to hearing before the Commissioner on the appointed day", and we did.

He did say to me in that conversation, he related to me that he had been to Mr. Glasser's office, and there was an interview, and I warned him not to make any statements to Glasser, or anybody else. I said, "Don't make any written statements." Colonel, there were other defendants in this same proceeding before the Commissioner, I think a man named Maples, and a man named Bernstein.

(Thereupon DEFENDANT ROTH'S EXHIBIT NO. _____ being the file of Commissioner Walker in the case of United States *vs.* Paul Svec, Maples and Bernstein, Commissioner's No. 20783, was offered and received in evidence and made a part of the record herein.)

Maples was the defendant there before the Commissioner. Mr. Edward Hess represented Mr. Maples and Mr. Bernstein. There were three defendants there. I represented Mr. Svec and Mr. Hess represented the other two. I have told you everything up to the date of the Commissioner's hearing. Mr. Glasser represented the Government in that case. At the hearing, the Government introduced their evidence, I think four or five agents took the witness stand and told their story. I wouldn't recall the names of them, whatever the file indicates, perhaps is the fact as to who they were. I don't recall all of the proof, but as to my client, it was substantially he was right by in front of the premises. The proof was that my client was riding by in front of the premises, and some agent said he saw him turn and look toward the premises of the place where they were raiding, and they said, "There goes Paul Svec". And one of the agents knew him, and knew he was out on bond in connection with a case, and they pursued him and took him into cus-

tody, and that was substantially the evidence as to Svec. The Commissioner heard the evidence, and discharged Paul Svec. Mr. Hess I believe made a Motion to suppress the evidence, and they were found somewhere connected or close to the still premises, and they were bound over to the District Court.

Paul Svec came in once or twice as to his appeal was pending. We had some financial dealings concerning the case, and so on. He came in shortly after he was discharged, and we had a conversation concerning this case.

1196 Q. Well now, did he tell you anything about this incident up in Glasser's office, Mr. Glasser's office, where some agent was supposed to be hidden in a closet, or something?

A. Yes, sir, we talked about that.

I should say it was maybe ten days after he was discharged, or a week, and he said to me that he was in Mr. Glasser's office, and that Mr. Glasser asked him, "Do you know me". And he said, "No." It was substantially as he related it on the witness stand here. That he didn't know him, and that he never paid any money to him, or to anybody for him. And then I said to him, "Were you telling the truth?" And he said, "Yes, sir." Well, I said then, "I admire you for standing there and telling the truth." There was something else said there at that time. I said it is common gossip all over the building—that there was a Government Agent secreted—

Q. Wait a minute. Where had you heard about it from time to time around this building?

A. It was all over the building. I believe I talked to the Commissioner about it, he knew it. Commissioner Walker.

And I said, "It is all over the Federal Building that there was an agent secreted in the room adjoining Mr. Glasser's office when you were in there, being interrogated", and he said is that so, and that is about the substance of it.

Q. Was there anything said about this Svec case to which I have referred about which I have neglected to ask you?

A. That is about all.

Q. All right. Now, let us take up this Dewes matter. It is mentioned you represented in Indictment 31201, trial before Judge Wilkerson, without a Jury, June 30, 1939.

Indictment 31201. Now, were you employed in the Commissioner's Court in the case involving Dewes?

A. I had nothing to do with any Commissioner hearing concerning Dewes or any of his co-defendants.

1197 Q. All right. Did you appear for Dewes more than in this one indictment Number 31201?

A. Well, there was an indictment returned subsequent to that one, which covered the same offense.

Q. That is 31502, and that was consolidated with 31201. But it was really only one trial?

A. One offense. But there was a subsequent indictment covering the same offense, added some additional defendants, but they were both consolidated for trial.

Q. But what I am getting at is did you have any other cases for Dewes?

A. No, sir.

I never represented him more than this once, and that was a trial by Judge Wilkerson without a jury, prosecuted by Mr. Ward.

Q. I believe when you were last on the stand, I was asking about the Dewes case, indictment 31201 consolidated with indictment 31502. I believe you stated that you were not present or representing any defendant in the Commissioner's court in that case, is that right?

A. Yes, sir.

I did represent the defendant Dewes in those two indictments. I did not represent any other defendant in that indictment. I first met Dewes about December, 1938 or January, 1939. It was after the indictment, after he had been indicted, I recall that. That case was tried June 30, 1939, before Judge Wilkerson, without a jury, and was prosecuted by Mr. Ward. I was engaged to try that case. I came over several times and the case was continued a few times, due to the illness of Mr. Anderson. I had known several times that the case would be continued because of the condition of the call or illness, one thing or the other continued it. While the case was pending, the indictment covering the same offenses was returned, naming some additional defendants and additional lawyers came into the case. Originally it was Mr. Ander-
1198 son's office and myself, and additional lawyers came in on behalf of additional defendants. I believe Mr. Cohen represented Widzes and Mr. Adams represented Duthorn. We conferred in my office concerning the preparation of that case, and decided we would rely on the

weakness of the Government's case and make no defense. The case was so heard before Judge Wilkerson and jury was waived. After it was heard, Judge Wilkerson took it under advisement for a week or two, and there was a finding of guilty as to Dewes, Raubunas, Beisner; Duthorn was discharged and Farber had entered a plea of guilty at one of the early stages. I don't recall just when, I was not there, when his case was disposed of, but I learned subsequently that he received a sentence of one hour in the custody of the Marshal's office, and Widzes was placed on probation, and that defendant Niess was never apprehended. There was no appeal in that case. The defendants were taken into custody, and began serving their sentences.

Q. Now, take up the Frank Hodorowicz case. Is there anything more you want to tell in the Dewes case, or have you covered that now?

A. Yes, sir.

Q. When did you represent Frank Hodorowicz in this court?

A. After an indictment was returned, I believe.

Q. The second indictment in the District Court, No. 31013, consolidated for trial with No. 31014, both returned June 30, 1938?

A. Yes, those are the indictments. It was after he was indicted, when I first met him.

I don't think there were any commissioner hearings involved in this case. There were other defendants in that indictment than Frank Hodorowicz, his brother Mike, and I believe Pete, and one Clem Dowiat.

Q. All right, now, with reference to the return of the indictment, when did you first meet Hodorowicz?

A. He came to my office some time after the indictment was returned, and after, I believe he had given bond. We had discussions concerning the case, and I filed my 1199 appearance. I had one conference with Mr. Glasser concerning it.

Mr. Glasser was the prosecutor. Well, I went over one day and asked what his attitude was with reference to the Hodorowicz. I told him I was somewhat of the opinion that, as to three of them, we hadn't much of a chance to win, that I thought the evidence might be a little bit different for them to prove as to Frank. He says, "I would not recommend anything but a substantial penitentiary sentence for the Hodorowicz." That was

the gist and substance of the conversation. I did report that to the Hodorowicz, and I later on was substituted as their attorney and Mr. Hess was engaged. I might say that during one of the conversations with Frank Hodorowicz, I suggested I thought it advisable to have two lawyers. I thought one lawyer should represent the three and a separate representative for Frank Hodorowicz, and Mr. Hess' name was mentioned. I believe I did a little work in connection with coming over here and substituting some securities for cash that he had, on the bond. We withdrew Liberty bonds and substituted real estate, and I did the necessary work in connection with substituting bail. Then Mr. Hess substituted for me in that case, which was ultimately tried.

Q. What was said between you and Frank Hodorowicz when you asked to withdraw and he retain Mr. Hess?

A. In fact, he did not come back. I prepared the substitution and could not get him down to sign it.

I don't recall exactly when I withdrew and Mr. Hess filed his appearance. It was toward the end of the summer. I know Mr. Hess 'phoned me that Hodorowicz had been in to see him and I said, "It is perfectly all right with me." That is a courtesy between lawyers. It was about September the 9th, 1938. I understand the case was later tried.

Q. And that was the case that was told about here, a jury trial before Judge Woodward, in which Mr. Glasser prosecuted and Mr. Hess defended.

1200 A. My answer—I did appear when the case was called for plea and arraignment and entered pleas of not guilty. Then it was set for trial.

That was the entire extent of my dealings with Frank Hodorowicz. He retained me and I attended to the bond and later withdrew.

I heard this man Duckett or Brown testify about a couple of cases before Judge Holly. I represented Mr. Brown in a case pending before Judge Holly. It had been pending there a little while. I came into it after the indictment and after he entered his plea, and after there had been one or two appearances. He did not, to my knowledge, have some other lawyer representing him before I came into it. There were two other defendants in that case who he informed me had entered pleas of guilty and were placed on probation. I was not in the case at that time, but I was informed that Senator Marowitz

represented Farber. I appeared on one occasion and after discussing the case that Mr. Brown told me about, I thought that it was hopeless and futile to go to trial. Subsequently a plea of guilty was entered. At the time I entered the plea of guilty, Mr. Ward appeared and made a statement that he desired to have the case sent up to Judge Woodward. I objected on the ground that there was a rule of court that required subsequent indictments naming the same defendants in similar cases, be assigned to the same judge. I said I thought that in accordance with the rule, the other indictment should come down to Judge Holly. Mr. Ward stated he conferred with the Judge and desired to have the case go to Judge Woodward, and it did. Mr. Glasser was the original prosecutor in charge. I believe Mr. Glasser was still the prosecutor when I filed my appearance. This indictment that was returned before Judge Woodward was called for plea and arraignment. I entered a plea of not guilty in that case, and the same question concerning the rule came up. The Judge said, "We will take the plea temporarily." We did, and at a later date, both cases came up before Judge Igoe, who had taken over Judge Woodward's call during his absence. I entered a plea of guilty to one indictment and stated to Mr. Duckett that as long as 1201 we were entering the plea of guilty to one, we might as well plead guilty to the other, and get a sentence by the Court. We pled guilty to both. I represented him in the early stages of one of those cases before the Commissioner. I believe the second indictment grew out of the still alleged to have been found somewhere on 40th street near Cottage Grove avenue. This was about six months before this indictment was returned.

He was arrested in an automobile sitting on the street,—it was parked at 39th and Cottage Grove, together with his nephew. The agent came up to him and took him into custody and took him back to this District to this distillery that was found two blocks away from where he was arrested. When the case came up before the Commissioner, I think once or twice, I think Mr. Gerber appeared at one hearing. There were quite a number of defendants, and the result of the Brown case was that, after some statement of facts, a motion by the prosecutor to dismiss that case was had. Later I understand he was indicted. That was before the Commissioner, I think in June of 1938. I was appearing for him there. On one

occasion Mr. Gerber appeared for the Government and on one occasion Mr. Glasser. When it was finally disposed of, Mr. Glasser appeared.

Q. Now, you heard some testimony about him looking at some papers over your shoulder?

A. When the second indictment was returned, we came over to give bond. I got the number out and prepared my motion slip, asking that the bail in one case stand as the bail in the other. I believe I went to Mr. Ward and he consented and approved the motion slip.

At that time we looked at the indictment. It had a conspiracy count and listed twenty overt acts concerning conversations and such things. I was going over it and he said, "It looks like I was followed". I read it and looked at the indictment in the clerk's office.

1202 Q. Mr. Roth, you saw these two indictments that were furnished by the prosecutor?

A. I examined those.

Q. Are these the same copies of the indictment you examined with Duckett or Brown in the clerk's office?

A. They appear to be similar.

Cross-Examination by Mr. McGreal.

I said I was forty-five years old. I was just forty-six the other day. I have been practicing law fourteen years. Prior to that I was an accountant. I hold a public accountant's certificate. I was practicing on my own account in Chicago. The Jursich farm case, 151 acres of land, was not the first case that was ever referred to me, that is the one Mr. Baker referred to me. I did represent the Wroblewskis, there is no question about that. Nobody referred that case to me. Mr. Edward Wroblewski came in to my office. I did represent Harry Duckett, alias Harry Brown. Mr. Kretske referred that case to me. I did represent Frank Hodorowicz. They came directly to my office. I did represent Frank Hodorowicz.

Q. Who referred that case to you.

A. Originally the Hodorowicz family, with Swanson, was referred to me by Mr. Kretske.

I did represent Swanson, and I did represent two other defendants in the original Hodorowicz case. There were only three defendants altogether. I represented the three. Mr. Kretske referred that case to me. I did represent Paul Svec. He came to my office, I believe, unreferred.

I certainly did hear Alexander Campbell testify. I am quite sure that he was correct about the date of the meeting, September the 30th, 1938. He was correct when he stated he met me in Ft. Wayne on that day. He was also correct when he stated he received a telephone call from me in Ft. Wayne. There is no question about him being correct when he stated he had a meeting with me in the Federal Building.

Q. He was correct when he stated he had a meeting with you, wherein you discussed the indictments of the Wroblewskis, is that right?

A. I don't think he ever said that.

That is right when he stated he met me outside the Federal Building about fifteen minutes afterwards. He is wrong—he was not correct when he quoted me as saying, "That is the way we do things in Chicago".

Q. He was correct when he stated you mentioned the figure of \$500 or \$1000?

A. I don't recall if that was mentioned on that occasion. I will say—

Q. Didn't you say in direct examination that you told Alex Campbell at that time that this was not the time that you could get \$500 to \$1000 in a bootlegging case?

A. That is right.

That is correct, I stated that. That is right, Alex Campbell was correct when he stated the figures \$500 to \$1000 were used. He was correct when he stated he met me on the 10th day of July, 1939, at Fort Wayne. He was also correct when he stated I had a meeting in his office with him on that day.

Q. He was correct when he stated that this Miss Stilwell was there?

A. I didn't know her name.

Q. There was a lady present?

A. Yes, sir.

Q. He was correct when he stated a man by the name of Moss was there?

A. I did see somebody at a distance.

There is no question about he being correct in stating that Norton Kretske was there. I did not tell Alexander Campbell, on July 10th, 1939, at that conversation, that Tom Bailey was making an investigation of certain lawyers in Chicago in those words. I did tell him in substance. I did tell him in substance that I knew that Tom Bailey was making an investigation of

certain lawyers in Chicago, and I told Alex Campbell that his name was mentioned in connection with that investigation. I did not tell him that I did not want to be involved in that matter.

Q. Did you tell him at that time and place, that some might say his name was used and that some might say he asked for a bribe?

A. Well, I just recall his name was mentioned.

That is right, I told him I knew his name was mentioned in the investigation in Chicago. I don't think I gave him the source of the information. I don't think I told him I talked to Mr. Horton, and Mr. Horton told me his name was mentioned. I would not recall exactly if I did tell him that.

Q. Did you at that time and place tell Alex Campbell that there was a Federal Judge in Chicago that was going to get Tom Bailey's job?

Mr. Poust: Mr. Roth is not deaf, and neither are the Judge and jury. There is no cause for Mr. McGreal to yell at the witness.

The Court: That is his method of cross-examining. He may proceed.

Mr. McGreal: I may be a little deaf myself.

Mr. Poust: I noticed when they cross-examined the Judge, they did not yell.

The Court: Mr. McGreal is not cross-examining a Judge. I have observed Mr. McGreal's method of cross-examination, and he may proceed.

Mr. McGreal: Q. Will you answer my question.

The Witness: A. Will you read the question?

(Whereupon the last question was read.)

The Witness: A. Most certainly not.

1205 I did talk to Alex Campbell at that time and place about the sentence of Wroblewski, but not as he told it. He was absolutely wrong the way he told it. There was testimony the Court already entered, for what I was asking, I was asking for nothing.

I did talk to Paul Svec after the hearing held before the United States Commissioner in this building on December 21, 1938. I could not fix the date. I certainly did represent him at that hearing. I certainly talked to him in and about the hearing. I would not recall if I left this building with him. I did not immediately after the hearing, on December 21, 1938, tell Paul Svec that he "stood

up all right" in answering questions that were asked by Mr. Glasser.

Q. Did you have any conversation at all with Svec at that time?

A. I certainly talked to him, I was representing him.

I had several conversations with Paul Svec after that. He came in in connection with the appeal. I believe I did have a conversation with him about ten days after that hearing.

Q. Who told you there was an agent secreted in Mr. Glasser's office?

A. One of the men I discussed it with was Judge Walker.

Q. When?

A. A week or two after it happened. Why, it was all over the building. I heard it every place I went.

Q. And you discussed it at that time?

A. Yes, I talked about it.

Q. Did you discuss it with Svec on that day?

A. Somewhere along about that day.

Q. Did you tell him he stood up all right?

A. I did not use that language, Mr. McGreal.

Q. Now, when did Wroblewski first come into the office?

A. Which Wroblewski?

1206 Q. The ones you represented.

A. Which one?

Q. Which one did you first represent?

A. Which one?

Q. Which one did you first represent?

A. I represented both of them.

The Court: The question is, which one did you first represent?

A. Both of them.

The Court: Q. At the same time?

A. Yes, the brother engaged me for both.

Q. Which brother came first?

A. That is different. Mr. Edward.

Mr. McGreal: Q. Was he charged with a crime at that time?

A. There was an indictment pending in Indiana.

Q. Was any charge pending against him in this district?

A. Not to my knowledge.

Q. Did you have any conversation with him concerning a charge that was placed against him in this district?

A. I don't recall that he said there was any charge pending or placed against him in this district.

Q. Did you have any conversation with him about a charge wherein his brother received a sentence of three months from Judge Barnes?

A. Yes, sir.

Q. Did he tell you he was involved in that case?

A. He explained to me in connection with that case,—he was asked to explain the possession. He came down—

Q. Came down where?

A. To the Federal Building.

1207 Q. Who did he say he talked to?

A. I don't recall.

Q. Go ahead, what happened?

A. He told about being called down here, or up here, to explain possession of four-fifths of a gallon of alcohol or uncolored spirits that were found in his basement at the time and—at the time the search warrant was executed on the garage, they also came to the house and searched the home and found a partially filled jug of uncolored spirits without stamps on it. They left word for him to get in touch with them, so he went downtown and explained it, and I guess he got permission to leave.

He did not mention any names or places except the Federal Building. Then he told the circumstances about the arrest of his brother in the case that was tried before Judge Barnes. He did tell me that his brother received a sentence of three months. He was not even indicted in that case.

Q. He was sent home after a conversation with Mr. Glasser?

A. I did not say with Mr. Glasser.

Q. You had discussed with him about double jeopardy, had you not?

A. He did not use that language at first. He said, "Can they punish my brother twice? They arrested him in Chicago and punished him—"

Q. And you told him they could not do that?

A. I had to explain how the Government might be able by using some other statute.

That is right, he was indicted in the Northern District of Indiana, he and his brother and two defendants, were

charged with a conspiracy against the alcohol tax law. I did read the indictment.

Q. Do you recall anything about two shipments of Alcohol from Chicago to Indiana?

1208 A. Two overt acts of the two defendants.

Q. So there was something else in the indictment?

A. He told me one of the others had been punished, that one had been sentenced to four months and the other had his probation revoked. I was the most surprised lawyer in the country.

Q. As the most surprised lawyer in the country, did you raise that defense in Indiana?

A. No, sir.

Q. Was that defense considered?

A. They got a conviction.

Q. And the Circuit Court of Appeals affirmed the conviction?

A. That is right. If you will let me explain it—

Q. No, you explained it.

Q. Now, that day you went down to Indiana with Kretzke, what road did you take down to Fort Wayne?

A. Well, I believe—I don't know the road number. I looked at the map and there was a very fine highway that passes—

Q. What road did you take to Fort Wayne?

A. Will you let me explain? I don't remember the number, Mr. McGreal. I will tell you the towns and you can figure it out for yourself.

We did go through Plymouth. We did not stop at Plymouth, we were late in getting—I don't remember very well what time we arrived in Plymouth. We figured it was about a four-hour ride and we figured it would be 5:00 o'clock.

Q. When you started out, Mr. Kretzke was going to see a man at Plymouth, wasn't he?

A. We were delayed in getting started.

Q. You did not stop in Plymouth?

A. We could not make it.

We did go to Ft. Wayne, that is right, Mr. McGreal. We went over to Mr. Campbell's office.

Q. Did you at that time say to Mr. Campbell, "Take Mr. Bailey off the case, if you can"?

A. Well, I know better than that.

The Court: The question is, did you say that to Mr. Campbell at that time?

Mr. McGreal: Did you?

The Witness: A. I did not.

Q. Did you tell Mr. Campbell he was one of the lawyers Mr. Bailey was investigating?

A. I did not mention names.

I absolutely did not tell Mr. Campbell not to say anything about our conversation of September 30, 1938. I told him to tell Mr. Bailey I was here and had a conversation with him, if he chose. I did go down to Ft. Wayne to talk about the second sentence of Wroblewski. I did not write any letter about that. I did not make any telephone calls about it.

Q. Did you communicate with the District Attorney of the Southern District of Indiana about it?

A. Mr. Gutsell advised me in connection with that.

The Southern District sentence was imposed on May 5, 1939. The sentence in the Northern District had been imposed in January, 1939. I certainly was present, when it was imposed, before Judge Slick, right in Ft. Wayne.

Q. You say Paul Svec just dropped into your office?

A. Yes, sir.

He paid my fee, two hundred dollars for the first trial court case. I agreed to handle his case on appeal for five hundred dollars, and he still owes me one hundred and fifty dollars. The total amount received from Paul Svec in that case was five hundred and fifty dollars for the trial court and appeal. He paid me one hundred 1210 dollars for representing him in the hearing in 1938.

The total amount I received from Paul Svec, altogether, in all the cases, was five hundred and fifty dollars and one hundred dollars, \$650.00. I received \$250.00 from the Wroblewskis. I drove with my wife down to Indiana on September 30, 1939—it was just a little outing for my wife. It cost probably four or five dollars. I did make a trip down to Indiana on July 10, 1939. That cost me four or five dollars, just for gas. I drove with Wroblewski at the time I made a trip to Hammond, at the time of the trial. That did not cost me anything. I did file printed briefs and abstracts in the Circuit Court of Appeals. I did not pay for those. The Wroblewskis paid for them, whatever the costs were. I will try to remember them if you want them.

Q. You did receive something more than \$250 from them, didn't you?

A. Not I.

Q. Did they pay it direct to the printing company?

A. When you say "received", I mean handed to me.

Q. I mean, how much did you receive?

A. How much I handled?

Q. How much did you receive from the Wroblewskis?

A. Maybe some costs they paid themselves.

Q. Did you pay the expense of printing the briefs and abstracts in the Circuit Court of Appeals?

A. I certainly did not.

Q. Did you write a check on your own account to the printer for the cost of printing them?

A. I don't know, there may have been an exchange of funds. They may have given me money and I drew a check for it. I personally did not pay my own money.

Q. They may have given you more than \$250?

A. Not as a fee.

1211 Q. But they may have given you more than \$250, is that right?

Mr. Poust: I object, your Honor. He has answered that three times. There is no point in repeating the question like that.

The Court: Have you the answer to your question?

Mr. McGreal: I think I got the answer I want, Judge.

Q. How, when the first Hodorowicz case was referred to you by Mr. Kretske, how much fee did you receive?

A. One hundred dollars.

I received that from Mr. Kretske along about the time the case was pending before the Commissioner. I believe it was after I had been before the Commissioner, and there was a three weeks' continuance had. I think it was between that period. I did not ever receive any more in that case. I made two appearances in court. I received \$50 from Mr. Kretske and was to receive additional money from Dewes, and I could not get it. That is right, all I received in the Dewes case was a fee of \$50.00.

Q. Who paid you your fees in the Jurich farm case?

A. We had a contract with Jurich, contingent upon success, Mr. Baker and I.

That is right, Mr. Baker referred that case to me for appeal. That was tried in the court of Judge Barnes and Mr. Glasser was on the other side. Mr. Glasser won and I took it to the Circuit Court of Appeals. That is the brief that was here yesterday, *United States versus* 151

acres of land. There are two briefs, one on behalf of the other claimant. That was Loyjk. I did represent him. I discovered there was a right of the mortgage man involved. I saw some papers, I had a copy of the statement that Mr. Jurich made to the Alcohol Tax Unit. They gave me a copy of the questions and answers. I says, "Why, you have an interest here, a man, to the extent of \$3,000. How come that claim was not filed on his behalf?"

It seemed somebody had slipped up on it. I said, "I 1212 will petition Judge Barnes and ask the right to file a claim, although there has been a verdict." The Government having knowledge of the mortgage man's rights and gave notice to everybody else, knew about him from the very first day, and then gave notice to the Marshal, they would not—I said I would petition Judge Barnes and that he may permit the claim to be filed if I am able to show they knew of his rights before. Judge Barnes overruled me and I appealed, and also appealed from the judgment as to Eleanor Jurich and her father.

I appealed to the Seventh Circuit Court of Appeals. The case was reversed and remanded, and with due respect to Judge Barnes, he took due notice of the fact that they could forfeit the entire bond. The Government bond was known as a libel. I would not know when that was filed. I did not try that case in the District Court. I think the libel case was filed prior to the criminal action in that case. I did represent one of the defendants in the criminal action that grew out of that seizure. I represented Mr. Jurich, the farmer. That was the only one. I appeared in both cases, in the libel and the indictment that subsequently followed. That is correct, Mr. Glasser had charge of both cases.

Q. Isn't it true that libel action was filed and disposed of prior to final disposition of the criminal case?

A. It was pending on appeal.

Q. In the lower court, it was disposed of?

A. I would not call it final disposition.

Q. Isn't it also true, that in a libel case, it is necessary for the Government to discuss all the evidence of the seizure?

A. Not necessarily.

Q. One of the elements necessary to prove a libel action, is what evidence the Government had in the criminal case, isn't that true?

A. Yes, but the principal thing—

Q. Answer yes or no. Isn't it true that one of
1213 the elements involved in a libel case, is the disclosure of all the evidence the Government had as a result of that seizure?

A. Not necessarily. If I was prosecuting I would not disclose it.

Q. Did Mr. Glasser?

A. I don't know.

Q. Did Mr. Glasser?

A. I was not there.

Q. You know he did, do you not?

A. You know I—

The Court: You examined the case and the record on appeal. You must have, if you made an appeal.

A. I did.

Q. Then you know just as much about it as if you were present in court.

Mr. Poust: He may not remember the record, your Honor.

The Witness: A. I don't memorize all the record.

Mr. Poust: I submit this farm libel case has nothing to do with the issues.

Mr. McGreal: You mentioned it in your direct.

Mr. Poust: No, I did not.

The Court: Proceed.

Cross-Examination by Mr. McGreal (Continued).

I examined the pleadings in the case of the United States *versus* 150 and a Fraction of Acres of land in Mc-Henry County, Illinois, Case No. 43361. That was a libel action, the United States *versus* John Jursich and Eleanor Jursich, owners of the land. The basis of the libel action was the seizure of a certain still on the land there. I don't recall who the operators of the still were alleged to be in the libel proceeding, it mentioned a lot of names. I have heard of the name of Dominic Guastella. I saw the name of Louis Spino in there, Stanley Bronkowski
and William M. Gerke. In addition to the land
1214 stated in the libel there was a tractor which they had no right to take.

Q. Which you thought they had no right to take?

A. The Circuit Court of Appeals agreed with me.

Q. In this same case?

A. Yes, sir.

Q. What evidence was presented in the record on the Government's contention along that line.

A. I would not remember that entire record. Do you want me to read it, Mr. McGreal?

Q. You can read the portion at the right.

A. I will be glad to.

Mr. McGreal: Mark this No. 194.

(Document marked as requested.)

Q. I show you a document which has been marked for identification as No. 194. What is that?

A. That appears to be a copy of the transcript of the record filed in the case of United States of America *versus* About 151 Acres of Land, United States Circuit Court of Appeals for the 7th Circuit, in which I represented the Appellant claimants.

I did not have co-counsel in that case. I did all the appeal work. Mr. Baker brought it to me and we conferred in connection with a motion for a new trial, but I conducted all the work thereafter. He brought it to me after the jury returned a verdict finding for the Government. I have known Mr. Baker six, or seven or eight years prior to that time. I can tell from examining the record the date this libel suit was filed. I can see the date the pleading was filed. The record shows the libel was filed on May 26th, 1937.

The Court: For the benefit of the Jury, you might explain the purpose of a libel action.

The Witness: A. A libel suit, some people mix it with, or mistake it for libel and slander, but we 1215 might call it a forfeiture suit. When the Government discovers a violation on certain premises where the revenue laws are involved, the Government has a right to seize property and forfeit it to the United States, because it was used in connection with the violation of the law. In this case, there was a still found on the farm, and the law provides for a proceeding where you may forfeit—

Mr. McGreal: Q. Excuse me, do you know whether or not a still was found on this farm?

A. I did after I got into the case. The Government files this proceeding of forfeiture and takes away the property. If after the hearing, such as Judge Barnes explained, they find an automobile that was used in connection with violation of the Revenue laws, they take the property away, if they have knowledge, but there

must be proof of knowledge, and proof of the use of the automobile. Then it becomes the property of the United States and is sold.

I stated that the libel here was filed May 26th, 1937. I would not know the exact date the indictment was returned unless I could refresh my recollection.

Mr. McGreal: I will show you our exhibit No. 170, and ask if you know what that is.

A. I will have to look through all this to find the entry. The record appears to be June 1, 1938.

Q. That would be about a few days after the libel suit was filed?

A. That is right.

Q. And in a libel action, as you say, it is necessary for the Government to show what evidence they have of the illegal operation?

A. They will sustain the allegations of their proof.

Q. So if they allege in the pleadings, that there was a still, they would have to prove it?

A. They would have to prove knowledge of it, knowledge of the use for unlawful purposes.

1216 Q. If they prove it at the trial of the criminal case, they are then disclosing evidence, are they not?

A. Certainly.

Q. And what was done in this case?

A. They would have to make proof by a preponderance, whereas, in the criminal case, beyond a reasonable doubt.

They would have to disclose what evidence they have. I represented Rose Vitale. Mr. Kretske sent her to me after the car was seized, she was sent to my office and I was asked to file the necessary libel proceedings, and claim to recover that car.

Q. A still was found on the property where the car was, is that correct?

A. I don't know anything only what was told me.

Q. Well, what was told to you?

A. She said the agents came to execute a warrant. I believe it was the State police. They had found a violation of some kind in the basement of the home, and then they went in the garage and took her automobile, which was a Chrysler, that she used for family purposes. She said there was an old Ford of her husband's there, but they would not take that; she said, "they took my car." I asked her, "Did you own the car?" She said "Yes." I asked her, if she ever used it to haul alcohol and she

said no. I said, "Was any alcohol found in it?" She said no. I said, "It seems I will not have much trouble in recovering that car." So I prepared a claim. You must first file a claim with the Alcohol Tax Unit within twenty days, if the property is worth less than five hundred dollars. When you file that claim and put up a cost bond of \$250, then they have to send the case to the District Court and the District Attorney must file forfeiture proceedings, and then it comes up before the Judge, and we have a trial.

1217 In the Vitale case there was a trial before Judge Barnes. The case was heard on the report. I don't even recall seeing Agent Dowd in the courtroom.

Q. Is that not true, that the case was submitted to the Court on the report?

A. I want to explain—I can't answer it that way.

Q. All right, you can answer it.

A. Mr. Glasser made the opening statement, read the report and submitted it to Judge Barnes.

The Court: Was any witness sworn or testimony taken?

A. No, sir.

The Court: All right.

Mr. McGreal: Q. The car was returned to Mrs. Vitale?

A. I moved for a finding based on the opening statement and report of the agent. I said, "Judge Barnes, if they expect to prove what is in that report, I am entitled to the car." "Is there any proof that there was alcohol in the car," he said. The Judge has a perfect right to direct a finding in favor of the defendant if, on the opening statement, it was found to be just a waste of time to proceed further. Judge Barnes interrogated Mr. Glasser and sustained my motion and ordered the car returned to Mrs. Vitale.

I had another libel case that day before Judge Barnes. I think it was a Chrysler that was involved. Mr. Glasser represented the Government in that case. I won that one, too. Mr. Serriano was the claimant.

Mr. Poust: Now, if your Honor please, I object. We are going off onto a libel case, which the Government introduced no proof on in their direct case. We confined ourselves on the stand to the testimony the Government put in on direct. If we are going off and trying more libel and criminal cases, we will be here all summer.

The Court: This is cross-examination.

1218 The Witness: I beat Mr. Ward on a truckload of sugar, too.

Mr. McGreal: Q. Is that in answer to the last question?

Mr. Ward: Let the record show it.

I represented Joe Serriano the same day.

Q. Who sent you that case?

A. He came to my office directly.

Rose Vitale came to my office on or about the time I filed the answer and claim. She came to my office, 10 North Clark. I think she was with two persons, one was a short, blonde man, an Italian. I know he could not speak English.

Q. Was it Leo Vitale?

A. I would not know him, Mr. McGreal.

Q. Do you know Leo Vitale?

A. I would not know him if I saw him. This man was an Italian.

Q. Did Mr. Kretske call you before they came or did they come with a note?

A. I believe he called or sent someone who brought them.

I received a fee of \$100 in that case. The total fee paid to me was \$100. Mr. Kretske got a portion of that. I gave him a forwarding fee. I saw him many times after that, I don't recall when. I certainly did see him quite often. I believe Mrs. Vitale said that her home was located at Peru. I believe it is along somewhere near LaSalle or Ottawa. I don't know exactly how far it is from Chicago.

Q. At the hearing before Judge Barnes, did you hear Mr. Glasser tell the Court anything about Leo Vitale?

A. Leo Vitale had nothing to do with the case.

Q. Leo Vitale was the husband of Rose Vitale, was he not?

Mr. Poust: I want to object now, your Honor. The only business or the only person he represented is Mrs. 1219 Rose Vitale in the libel case. Why should we be spending time here on her husband's case? Mr. Dowd said he had twenty-six cases or stills, but there is no charge that Mr. Roth ever represented the husband. Why should we be examined on that?

The Court: I think we ought to know everything that transpired before the Court in that particular case.

Mr. Poust: I am certainly willing to go into everything that happened in the court.

The Court: Answer the question.

The Witness: A. I said to Judge Barnes: "It would not make any difference if she was the wife of a boot-legger, they would not have a right to go into the garage and take her automobile. I am not interested in her husband's business."

The Court: Q. What did Mr. Glasser say?

A. He read his report and Judge Barnes read it.

The Court: Miss Reporter, will you please read the last question pertaining to this?

(Whereupon the following question was read by the reporter: "At the hearing before Judge Barnes, did you hear Mr. Glasser tell the Court anything about Leo Vitale?")

The Court: Now, answer that question.

The Witness: A. No, sir.

Mr. McGreal: Q. There was nothing said about Leo Vitale?

A. No, sir.

Q. Did Mr. Glasser at that time and place tell the Court Leo Vitale had been arrested on April 5, 1938 at Leonore, Illinois, at the farm of Charles Meyers?

A. We were not trying Leo Vitale at that time.

Q. Did he?

A. No.

1220 Q. Is that all that was said before the Court?

A. The report was read, Mr. McGreal, and Judge Barnes examined the report and asked a few questions of Mr. Glasser and Mr. Glasser answered.

In all, I guess in the period of sixteen or twenty months, I received a dozen or more cases referred to me by Mr. Kretske. I remember that one case which was with Mr. Ward, on the truckload of sugar.

Q. You have a very good recollection of that, haven't you?

A. That is another libel case.

Q. How many did Mr. Kretske refer to you?

A. About a dozen or more.

One was the Rose Vitale case. He did not refer the Paul Svec case to me. Frank Hodorowicz came in on his own account, but I originally met the brother through Mr. Kretske and Swede Swanson and Clem Dowiat. I met Swanson and Dowiat through Mr. Kretske. We mentioned the Brown case, that is the Duckett case. I would not recall other than the one we discussed. He had nothing to do with that Wroblewski case.

Q. Now, prior to trying that case down in Hammond, you had been down there, too?

A. On one occasion.

Q. And tried a case?

A. Not in Hammond.

Q. The Northern District of Indiana?

A. Yes, sir.

Q. You were familiar with the practice in that district?

A. I am familiar with Federal practice in the United States.

Q. You know a complaint was filed, the case had to be presented?

A. I also know that when there was an indictment returned, you cannot No-Bill anybody.

1221 When it is returned you cannot undo it. Of course, I never tried to undo it. It is impossible. As a matter of law, once an indictment is returned in open court the next move is before that court.

Q. You had no conversation with Alex Campbell about a No-Bill?

A. It is preposterous. I read the indictment before I went down.

I did tell Mr. Campbell I heard that Tom Bailey had been chased out of a court room down South. I heard it from Glasser before I went down. Four or five months prior. I would not recall whether Mr. Glasser was an Assistant United States Attorney at that time.

Q. You say it was four or five months before you went to Indiana?

A. I think it was after.

I went down September the 30th, 1938.

Q. So four or five months before that, Mr. Glasser was still an Assistant United States Attorney?

A. I don't recall.

Q. You had a conversation with Mr. Glasser about Tom Bailey being chased out of a court room down South?

A. I believe it was,—it is hard to fix. He was around talking to so many people, to witnesses, and he talked to Mr. Horton, and a lot of clients. It was the gossip all over town.

Q. You mean Mr. Bailey—

The Court: Let's go back to this question.

Will the reporter please read the last question?

(Question read as requested.)

The Court: When did Mr. Glasser tell you that? You

said it was four or five months before you went to Indiana?

A. I don't want to fix the time.

Q. Well, why don't you say so?

A. I would not like to fix the time, Judge.

Cross-Examination by Mr. McGreal (Resumed).

I would not recall where that conversation took place. I could not say it was in this building. I don't think it was in Mr. Glasser's office.

Examination by the Court.

I do know that Mr. Glasser told me that, but I don't know where or when.

Mr. McGreal: Q. Did he tell you at that time that Mr. Bailey was a Government officer?

A. Well, I assumed that, I had seen him around a couple of years and knew that.

I knew he was a Government officer. I saw him and talked to him several times. I might have had a conversation with him, wherein I stated that Clem Dowiat was a boy on the farm and did not know he was indicted. They might have told me, that, I can't recall.

The Court: The question is, did you have that conversation with Mr. Bailey?

A. I wouldn't know.

The Court: Well, just say so, then.

Mr. McGreal: Q. Did Mr. Bailey tell you at that time that Clem Dowiat was working at Frank Hodorowicz' hardware store?

A. He might have.

Q. Did he also tell you that if you asked for a continuance on that account he would tell the court the truth? Did he or not?

A. No, I would like to explain. There is no discussion when a case comes up for plea and arraignment.

Q. Did you have that conversation with Tom Bailey?

A. No, sir, it is preposterous—and—

I did have a conversation with Alex Campbell. I never said that there was a Federal Judge in Chicago who was going to get Tom Bailey's job. I recall that one of the Wroblewskis came to my office after the Wroblewski case was disposed of and while it was pending on appeal.

A. Which Wroblewski?

Q. Edward or William?

1223 A. Yes, fix the time and place, please.

Q. You fix the time and place. You had the conversation.

A. I don't know what day you are referring to.

Q. Did you have any conversation where you told them not to go to the office of the Federal Bureau of Identification?

A. I tell them, I always tell them, never to go to the Government's agent and make statements unless they have a lawyer there. I tell all my clients that.

Q. Did you have a conversation with the Wroblewskis, where you told them not to go to the office of the Federal Bureau of Identification?

A. Why, certainly.

The Court: All right, that is enough.

Mr. Foust: He has answered.

The Court: He has a lot of last answers.

The Witness: I like to show the practice.

The Court: Never mind.

Mr. Poust: He is a lawyer and likes to talk.

The Court: That does not give him any more privilege than anybody else on the stand.

Mr. McGreal: He is talking, all right.

The Witness: I am sorry.

The Court: Never mind.

Mr. Kretske sent Dewes to me after he was indicted in the case of the United States *versus* Dewes, Raubunas and Beisner. I received a fee of \$50.00, as I told you before. I received this from Mr. Kretske.

Q. That was in case 31201?

A. Consolidated with the other for trial.

1224 I don't know how far the Keenan Hotel is from the Federal Building in Ft. Wayne, three or four or five blocks. The street is kind of jagged. I am sure it is not one block, positive. On September 30th, when I had the first conference with Alex Campbell I went downstairs in the Federal Building.

Q. After the conference was terminated?

A. I left the building, certainly.

As I was coming out, he was almost right behind. I was looking which direction to take and he came out right after. I was in a hurry to get to my wife. There is some steps in front of the Federal Building. I can't recall if

there is grass and shrubbery. The weather was a very typical fall evening, I think it was a nice day. I did not make a remark to Mr. Campbell about the weather. I told him I was in a hurry to get to the hotel, that my wife was waiting and I better get home. Ten or fifteen minutes passed from the time of the conference until I met him downstairs.

Redirect Examination by Mr. Poust.

Q. Now, Mr. Roth, some time back here, you were trying to explain about the Wroblewski matter. Now, you can explain it.

A. The reason I adopted a different theory of that case and did not choose to follow 259 Federal,—you might read that, Mr. McGreal—and—

Mr. McGreal: I did not get the remark of the witness.

The Witness: I suggest that you read the 259 Federal.

Mr. McGreal: I suggest that you read it again.

A. I decided there was a very important Constitutional question involved and I was very sure I could win in the upper court, because two of our Federal Judges here had sustained a similar proposition. The affidavit for the search warrant did not particularly describe the things to be seized, in accordance with the Constitutional requirements.

1225 I filed a petition to suppress the evidence and was overruled. I knew if I was successful in suppressing the evidence, I would be almost certain of a reversal in the Upper Court. It was my theory that if William Wroblewski testified that he had been punished and it had no relation to the conspiracy—

Mr. Ward: What is the question pending?

A. I was explaining what you asked me.

The Court: And now he is going off on another tangent.

The Court: The Jury might be interested in knowing what the usual charge is for a day or services of an attorney in Chicago.

Mr. Poust: All right. Answer that question.

The Witness. A. I would say a reasonable fee would be from seventy-five dollars to one hundred dollars a day; two hundred and fifty dollars to five hundred dollars per case.

Q. I will ask you to look at two indictments, United

States of America *versus* Harry Duckatt, alias Harry Brown, and others, No. 31193 and 31449, and find the overt acts in there, which you showed to Mr. Duckett or read to him, or which he read over your shoulder on this day in question?

The Witness: A. I am now looking at Indictment 31449, Exhibit No. — there is no exhibit number on here.

Q. You have a copy here.

A. 195.

Q. Here is 196.

A. When I was examining the last count in the indictment, which is a conspiracy count, and we were reading the various acts alleged as having been committed in the conspiracy, we referred to overt act 6, which reads, "On to-wit, April 15, 1938, at to-wit, Chicago, Illinois, Art Stern drove a certain truck bearing ——— (Reading) he said "It looks like they were following me while I was following that truck."

1226 Q. Have you now explained that?

A. That is right, yes, sir.

Mr. Poust: By stipulation, may Nos. 195 and 196, copies in lieu of the originals, be received in evidence?

The Court: They may be admitted.

(Whereupon copies of the indictment, No. 31193 and 31449, United States of America *versus* Harry Duckett, alias Harry Brown and others, marked, respectively, "DEFENDANT ROTH'S EXHIBITS, NOS. 195 and 196," were offered and received in evidence and made a part of the record herein.)

Mr. Poust: Q. Now, Mr. Roth, is there anything about this Jurich libel case that you have not fully explained?

A. Yes, sir.

Q. Go ahead and explain.

A. I did represent Jursich in the criminal case. The indictment was returned, and when the indictment was returned I filed an appearance. The forfeiture was pending in the Circuit Court of Appeals, and I filed a plea which is labeled *res adjudicata*. I claimed you cannot take a man's farm, first punish him by forfeiture and then by imprisonment. I claim he was tried for the alleged acts in the civil case.

Judge Sullivan continued the plea from time to time, pending the outcome of the case in the Circuit Court of Appeals; and when that was decided in my favor, the Government indicated they might take it to the United

States Supreme Court and wanted to take it up with the Solicitor General's office at Washington. Judge Sullivan kept continuing it, and subsequently I withdrew from the case. However, Mr. Hess followed me and represented Jursich and he received probation. That covers everything on the Jursich libel case and the criminal case.

It was a pretty large distillery on the Jursich farm.
1227 Mr. Glasser returned the indictment. I raised that plea of *res adjudicata* while he was in office and the case was completed by Mr. Ward.

Q. All right. Now, with reference to this other libel case that you handled on the same day, with the Vitale case here before Judge Barnes, was that the case of the United States *versus* one Plymouth Sedan?

A. Yes, sir.

The claimant was Mr. Serriano. He was my client. Mr. Glasser represented the Government.

Q. Tell us what happened before Judge Barnes in that case?

A. The report was read, Mr. Glasser stated what he expected to prove, and that case was worse than the other one. They took the car off the street without any alcohol in it or any claim that there was alcohol in it. The facts were, some agent had a man arrested in a home where alcohol was being sold in small quantities. They saw a man drive up in a car, he got out of the car, and they went over and seized the car when they made the arrest in the home. That was the most flagrant violation I ever encountered.

I have told everything that happened before Judge Barnes, I was awarded the car that day, the same day as the Vitale case. It seems Judge Barnes set all his libel cases that day. I did try another libel case entitled *U. S. vs.*—one International truck, that was truck load of sugar, in this courtroom, against Mr. Ward.

Mr. Ward: Of course, your Honor, this is objectionable. As long as he mentions my name, I am willink to hear about it, but it is not in this case. That is the reason I am objecting to it.

Mr. Poust: It will take about two minutes. I want to show it was handled the same way.

The Witness: A. Mr. Ward read off his report, and I said, "Judge, on the report you have here, I move for a finding for the claimant." Mr. Ward said, "I don't think much of the case, either." Mr. Ritter said, "We have

information that we followed this truck for some 1228 distance." The Judge said, "Since when did they change the hearsay rule?" And the same thing happened.

Recross Examination by Mr. Ward.

Q. Now, that last statement—

A. There was nothing irregular or improper.

Q. That last statement of yours is about 100 per cent correct, there was no dispute about it, was there?

A. There was nothing improper about it.

Q. Directing your attention back to this Vitale case that Judge Barnes testified about, the same case, you know the one?

A. Yes, sir.

Q. Your client, Rose Vitale, appeared before you as Notary Public?

A. Yes, sir. No doubt—

Q. Just answer the question. You notarized the papers.

A. Yes, sir. That is necessary.

Q. And you also examined the libel?

A. You don't—

Q. Just answer the question, please. If you did not—

Mr. Poust: I have an objection.

The Court: Well, make it.

Mr. Poust: Mr. McGreal has cross-examined this witness on the Vitale case.

The Court: He did.

Mr. Poust: I did not go back on the Vitale case again. They are changing cross-examiners, which is a violation of the rule, and going back on the Vitale case.

Mr. McGreal: May I answer that, your Honor?

The Court: You won't need to. Objection overruled. Proceed.

1229 Mr. Ward: Q. You stated that you were an expert on Federal practice and procedure, is that right?

A. I think.

I did not say I know the law in every district of the United States. I know what you mean by this libel. I received a copy. I would not recollect what the allegations were in that libel. It was under the statute attempting the forfeiture of a car. I have not looked at this libel since my indictment was returned in September of 1939?

A. No, I just saw—

Q. You have answered. Before going over to try this case before Judge Barnes, did you have any idea what the evidence was that the Government was in possession of?

A. One thing—

Q. Just answer my question.

A. What Mrs. Vitale told me.

Q. Did Mrs. Vitale tell you there was a still found in the basement of her home—wait until I get through—in the basement of her home, almost directly under the kitchen which she occupied day after day; and that in addition to that, the garage in which this automobile was found, was closely adjacent to the house, not more than fifteen inches? Did she tell you that alcohol agents had followed this car and see the license numbers changed and the car used for the transportation of untaxpaid alcohol?

A. No, sir.

I did not hear Mr. Glasser tell Judge Barnes that. I do know Mr. Ritter, I believe he is in charge of the agents.

Q. Did you see Mr. Ritter in the court room there?

A. There were several persons, I don't know who they were.

I do not recall seeing Mr. Ritter talk to Mr. Glasser at that time before Judge Barnes made his decision.

1230 Q. Now, on the libel case, you told this jury what you understood about law of libel. Now, do you know that there are certain conditions or certain statements of fact which must appear in the libel in order to complete the proof? Do you know that?

Mr. Poust: Objection. We are on trial for being a conspirator, not for being a lawyer. I object to spending a lot of time examining him on his legal knowledge. I don't see the materiality.

Mr. Ward: He has qualified himself.

The Court: Yes.

Mr. Poust: I will enter him in a contest with—

The Court: Objection overruled.

The Witness: A. A pleading must state ultimate facts, not evidentiary.

Mr. Ward: Yes.

Q. And if the pleadings don't fit the proof, the Judge has to give you a judgment on the ground of variance, doesn't he? Yes or no?

A. Yes.

Q. And if the pleading in the Vitale case that Judge Barnes decided and returned the car on, did not fit the proof that was in the possession of the Government, it would not have made any difference what the Government showed, is that right? Yes or no.

A. He would have a right to amend the pleading.

Q. He would have a right to amend the pleading?

A. That is right.

Q. Did you hear Mr. Glasser at any time ask leave of Judge Barnes to amend the pleading in the Vitale libel case?

A. He did not.

1231 *Redirect Examination by Mr. Poust.*

Q. Did Mr. Ward ask leave to amend the pleadings in the truckload of sugar case? Yes or no?

A. No, sir; he did not.

(Witness excused.)

ALFAR M. EBERHARDT was called as a witness on behalf of the defendant Kretske, having been first duly sworn, was examined, and testified as follows:

Direct Examination by Mr. Stewart.

My name is Alfar M. Eberhardt. My residence is 1038 Sheridan Road, Chicago. I am a son of Judge Eberhardt and also a Judge myself. I was Assistant Attorney General of the State of Illinois prior to election as Judge of the Municipal Court. I held that position three and a half years. I have served on the bench here eight years. I know the defendant, Norton I. Kretske. I have known the Kretske family for possibly three years. I was born and raised in the same neighborhood in which they live now, about a mile from where they live. I know other people who know him and have mutual friends in the neighborhood. In that way, I have learned his general reputation for honesty and integrity and a law-abiding citizen. It is good.

Cross-Examination by Mr. Ward.

I have finished my term of office in the Municipal Court in 1932, and have been practicing law since.

Mr. Stewart: How long have you practiced?

A. Over twenty-five years.

(Witness excused.)

1232 ELSIE BLANKENBERG was called as a witness on behalf of the defendant Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Elsie Blankenberg. I reside at 7 So. Central Park. I am an X-Ray technician. I am connected with Henrotin Hospital. I have been engaged in that work about fifteen years. I received my education for the line of work I am in at Henrotin Hospital and the University Hospital. I have had considerable experience in the taking of X-Rays. I did take an X-Ray of the patient Joseph Cole. I brought the X-Ray film and the records, and the hospital records also.

Mr. Stewart: I will ask that the entire group be marked with the next number.

(Films marked Defendants' Exhibit No. 188.)

Mr. Stewart: And the hospital record, mark it Exhibit Number 189.

(Documents so marked.)

Mr. Stewart: I will offer these, your Honor, and I will follow it up with the Doctor. That will be all. Do you want to cross-examine?

(Whereupon the films marked EXHIBIT NO. 188 and the hospital record, marked EXHIBIT NO. 189, were offered and received in evidence as Defendant Glasser's Exhibits, and made a part of the record herein.)

Mr. Ward: Well, I don't know when these were taken.

Mr. Stewart: Well, ask her.

Mr. Ward: Well, you have not asked her. They may have been taken 20 years ago, for all I know. If I saw the date on it—

The Witness: 1937.

The Court: Did you take the pictures?

1233 A. Yes, sir.

Q. When?

A. It appears on the films. I don't just recall, it was in 1937.

Q. What?

A. I don't recall the date offhand. It is on the films, it was in 1937, I know the year.

(Witness examines films.)

May 18, 1937.

Cross-Examination by Mr. Ward.

Of course I don't recall the patients that come into our hospital.

Q. They come in and you take their pictures, and away they go, and that is all you remember?

A. Some are returned.

Unless it is some extraordinary or unusual case I do not have any reason to remember it. The name on this envelope is not in my handwriting. That is just a girl we have who is doing some office work now. We just took the films--Mr. Cole had a mastoid. No, it is not in my handwriting. I have the date on the film, 5/18/37. That is our method of putting the date on the film. There are six views of the object that we were picturing. There are different views of the skull.

(Witness excused.)

DR. ABRAHAM ETTELSON was called as a witness on behalf of the Defendant Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stewart.

My name is Abraham Ettelson. I live at 823 Guernsey Street. I am a physician and surgeon, licensed under the laws of Illinois. I was admitted in 1925. I received my education at the University of Illinois Medical School. I am a graduate of that institution. I did post graduate work at the Research Educational Hospital of the University of Illinois. I am now connected with the staff of hospitals, Mt. Sinai Hospital is one of them, here in Chicago. I am on the staff of the

Illinois Masonic Hospital and the Edgewater Hospital. I have specialized in the branch of Neurological Consultant and Surgery.

Q. And you are qualified by education, training and experience?

Mr. Ward: We will admit that he is.

Mr. Stewart: Q. Doctor, will you examine the X-Ray plates which have been introduced here, as a matter of fact, you have examined them before, haven't you?

A. Yes, sir.

Q. And you are familiar with them?

Mr. Ward: We will admit the Doctor is also qualified to examine X-Ray plates.

Mr. Stewart: All right, we will shorten it a good deal, and get right down to it.

Q. Just sum up for the Court and Jury what you find in those plates, without going into a great deal of medical detail, just tell us in substance what the plates show.

Mr. Ward: Just a minute, I have admitted the qualifications of the Doctor, and I have admitted that he is a competent man to diagnose and tell what these X-Ray films portray, but that is as far as I have gone in my admission.

Mr. Stewart: And how much further do you need go?

The Court: Have you ever examined the patient?

A. I never saw the patient.

Q. All you can tell us is what you observe in those films?

A. That is right.

The Court: All right, go ahead.

Mr. Stewart: All right, proceed.

1235 The Witness: A. This is a lateral view, the film of the skull which shows—you will have to take my word for it, for in the absence of a shadow box this is not the best way to look at a film, because of the light, the light is not good,—but it shows several slugs, gun shot wounds in the head, with several slugs located in various parts toward the base of the skull, and many, many small fragments of lead, of slugs, throughout the frontal area of the skull. That is the lateral view.

Now, we have here the frontal view with the face down, and that also shows the slugs that I mentioned, and a small one up on top of the skull, which apparently is invisible in the lateral view, and also on one side here

(indicating), one very superficial slug which seems to be in the soft tissue.

Now, we have two small views on the same film here. This is taken mostly for the mastoid, as I can see it, because the ear is visible in both plates, and that also shows many small fragments peppered in the base of the skull. And this is a view—these are two views, in fact, which I am sorry we don't have a shadow box here to show.

I looked at it through a shadow box. It is much better. I am familiar with that, and this again shows at the base of the skull many small fragments of foreign bodies, and then this superficial one here in the soft tissue. I have before this time examined and studied that report. Exhibit No. 189.

Mr. Ward: Just a minute. I object to that, if Your Honor please, to any report, unless we know—

The Court: He can state whether he examined it, and that is as far as he can go at the present time.

Mr. Stewart: Now, Doctor, have you an opinion based upon your examination of those X-Ray plates—

Mr. Ward: Just hold this answer, Doctor, and give me a chance to object.

The Witness: I will.

1236 Mr. Stewart: —as to what might result from the condition you see from the plates.

Mr. Ward: I object to that, if your Honor please.

The Court: Sustained.

Mr. Stewart: Well, Doctor, as an expert, and having examined the case and history from the records of the hospital, are you able to diagnose the person who is the subject of those plates and records?

Mr. Ward: I object to that; it is immaterial.

The Court: Let this doctor go out and examine the patient, if he wants to testify as to the patient. I am not going to permit him to form an opinion from examination made by somebody else and upon these X-Rays. Objection sustained.

Mr. Stewart: Well, I will make my offer, if I may, please.

Mr. Ward: I object to any offer being made.

The Court: You may make the offer in the absence of the Jury.

Mr. Stewart: I will do it later, so I won't interrupt

the trial. I will withdraw the witness for the time, in view of the Court's ruling.

Mr. Ward: Your Honor, what I started out to say, and didn't intend to interrupt him at the time—Your Honor, I reserve the right to move to strike out all of this. Are you going to withhold your ruling?

The Court: I will strike on Motion at any time.

(Witness excused.)

1237 CHARLES M. ROBSON, called as a witness on behalf of the Defendant Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

My name is Charles M. Robson. I reside in Joliet, Illinois. I am an attorney at law since 1929. At present I am associated with Raymond Faulkner. In 1932 to 1936 I was associated with William McCabe. At that time Mr. McCabe was States Attorney of Will County. I am acquainted with the defendant, Alfred E. Roth. I was acquainted with him during those years that I was associated with States Attorney McCabe. During those years, 1933 to date, Mr. McCabe, and I had occasion to refer Federal Court cases that we were handling to Mr. Roth. That has been on several occasions.

Cross-Examination by Mr. Ward.

It was in the early part of 1933 that we referred the first case to Mr. Roth.

Q. And do you recall what kind of a case that was?

A. That was a contest.

Q. Just a minute. Criminal case?

A. No, civil case, bankruptcy matter that was contested.

The last time I referred a case to him was about a year and a half or two years ago. It was not a criminal case. That was a civil matter.

(Witness excused.)

IRWIN CLORFENE, was called as a witness on behalf of the Defendant Roth, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Poust.

1238 My name is Irwin Clorfene. I reside at 3857 Van Buren Street. I am an attorney by profession. I do hold an office of honor and trust in this county and state. I am an Assistant State's Attorney of Cook County, and have been a little over seven years. I am acquainted with Alfred E. Roth, one of the defendants here. I have had occasion to refer a Federal Court matter to Mr. Roth. That is correct, it was before I became Assistant State's Attorney.

Mr. Ward: No cross-examination.

(Witness excused.)

MICHAEL L. IGOE, called as a witness on behalf of the defendants, Glasser and Kretske, having been first duly sworn, was examined, and testified as follows:

Direct Examination by Mr. Stewart.

My name is Michael L. Igoe. My residence is Chicago, Illinois. I have been a member of the bar thirty-two years. I now hold the position of Judge of the United States District Court of the Northern District of Illinois. Before that I did hold other offices of trust in this community. Before my present position I was United States Attorney for this District. Before that I was a Congressman-at-Large representing the entire State of Illinois. Before that for sixteen years I was member of the Illinois Legislature and other times I was a member of the Board of South Park Commissioners. During the time that I was District Attorney I had Daniel Glasser, the defendant, as one of my assistants. He did work under my supervision, he was in the office when I was appointed, and he was in the office when I left.

Q. Now, I want to call your attention to a prosecution which has been mentioned here concerning the Hodorowicz brothers, do you remember having a discussion concerning that case with your assistant Mr. Glasser?

1239 A. Very well.

I have seen Exhibit 160 before. This was brought to my office one day with an agent named Bailey, I think was one of the agents, and Glasser. I don't know whether anyone else was present or not. There was a conversation had at that time concerning the possible presentation of that conspiracy case to the Grand Jury. I remember the agent came in accompanied by Glasser. I think Glasser telephoned to me and told me he had the agent in his office and wanted to know if he could bring him around to the front office, and I told him to come around. They brought this report in and they discussed it, they mentioned the name of Hodorowicz and I said to Glasser in the presence of these other people, I said, "That is the same crowd we have been trying to capture for several years out here in Roseland." Now I said, this is rather a voluminous report and to me it looks like it is typical of many of the reports the alcohol agents bring over here, for they attempt to bring in a lot of small fries, minor actors of a thing, if they can find a case against the real offenders, these are the people we are going after. I said I want some time to go over this report, I will go over it with you, and if there is some evidence in this report which indicates they are trying to make a real case against the Hodorowiczes instead of the typical cases where they bring in a lot of minor figures, we will present that case to the Grand Jury with all the force we have here present and have the Grand Jury bring in indictments, I am quite sure you can get a conviction. I later had a conversation with my assistant, Mr. Glasser, concerning that report.

Q. And, directing your attention to a conversation, did you ask Mr. Glasser if he had any substantive case against the ring leaders?

A. Glasser told me he was going to make a substantive case, that means a real case, against the real actors, against these men, not merely one of these conspiracies where they try to go out and use a catch to try to bring in all the neighbors in the neighborhood and, told me he was working on a real case for violation, a substantial case where, in the event of conviction, he could get a real sentence and not as in the conspiracy case, a sentence which is only two years. He told me he was working along that line and he said I think it is the proper way to work on if you can get them, can get evidence,

that kind of evidence, it is the kind to present to the Grand Jury and that is the kind of case to take to trial.

He told me he did have a case against the Hodorowicz, who were the leaders. That case was prosecuted, I don't know whether before I left or afterwards, but about that time. I do know that there was a conviction and substantial sentences were imposed, I believe by Judge Woodward.

Q. And after these conferences with your assistant and going over that report I just handed to you, did you finally conclude as to what would be done?

The Court: Just let me call this to the Judge's attention. I wondered if this report was in here, Judge, (indicating) I was just wondering.

The Witness: That is the only thing they do over there, they bring you back a lot of reports—

The Court: That is the one I mean (indicating). I wondered if you ever saw this report (indicating)?

A. I am quite sure this is the one, it is dated April 21, 1938. I am quite sure that is the report which involved the Hodorowicz.

And it involved a lot of these other people out in that particular neighborhood. I know all the years we were upstairs we were after the Hodorowicz people.

Insofar as I know the conspiracy matter that is involved in that report was never presented to the Grand Jury.

Q. And what were your directions to your assistant concerning the presentation of that?

1241 A. My directions to Mr. Glasser were that if he had some real evidence involving the violations of substantive laws wherein the Hodorowicz would be involved and could be convicted, those were the cases to follow out because I had seen so many cases preceded the investigation involving the Hodorowicz go up in smoke, that when a real case had the particular parties present I wanted it presented in a proper fashion.

Q. And what were your instructions in reference to this so-called conspiracy case as far as the Grand Jury case was concerned?

A. My instruction to Mr. Glasser was to present that case to the Grand Jury if he saw fit.

Q. And now directing your attention to another group of law violators who have been referred here in evidence as the Spring Grove case, wherein Mr. Glasser was pre-

senting the matter to the Grand Jury concerning Kaplan, and Dewes and Raubunas, and a man named Cole, and man named Pregonzer, do you remember Mr. Glasser discussing that case with you from time to time?

A. I don't remember the name Spring Grove, I don't remember Kaplan. I do remember Cole. Cole as I remember it was a man brought in before the Grand Jury, he told one story and the Grand Jury was not satisfied with it and they brought him back and he told a different story, and I think he told two or three different stories, and finally Mr. Glasser came in and reported to me that he thought the man was mentally unbalanced, and then he had him checked up and I think he brought back then a record and a report which indicated either the man had been shot or he had been in an accident, anyhow he had sustained some kind of injury to his brain, and he was so thoroughly unreliable and undependable that we couldn't use him as a witness.

Q. And, Judge, did Mr. Glasser report anything else to you concerning what the agent had told and what 1242 he expected to get and what he finally got in the way of evidence?

A. Glasser told me in that case as he told me in many other cases that the agent would tell him one thing and the witnesses would tell him something quite different; and in this particular case, as I remember it in connection with the name of Kaplan; he insisted that he wanted a stenographer before the Grand Jury so that in the event that the indictment was returned and that witnesses sought to run out on the testimony given before the Grand Jury, he could then confront them with the stenographic transcript of what had occurred in the Grand Jury room.

He did request my permission to have such a stenographer, and I told the Chief Clerk to arrange for it, and as that hearing before the Grand Jury progressed from time to time Mr. Glasser did take up with me and report to me what was going on in the Grand Jury room. I think he told me one of the witnesses the agents promised him would testify, refused to sign an immunity waiver, I have forgotten the name of that man, and there were a couple of other witnesses who before the Grand Jury testified directly opposite to what the agents told Glasser they would testify to. And as a result he did tell me that probably the Grand Jury would No-Bill some of the people that were involved. I told him that that was the func-

tion of the Grand Jury, they had the absolute power and the complete authority to either No Bill or True Bill the persons—these matters were investigated by them and whatever the action of the Grand Jury was we would have to be bound by it.

Q. Now going back to the year 1935, do you remember the prosecution involving a still where there was a defendant named Workman and which involved a large number of other defendants?

A. Oh, I have a sort of a hazy recollection of the name Workman. I think that matter was brought to my attention by one of the Assistant District attorneys in charge of this case who wanted to know if I remembered the case, and I told him I had a hazy, insistent recollection of it, that is what I told him at the time. You have since asked me about it and some facts have come back to my memory as to what that case was about. As I remember it Workman was charged with maintaining and operating a still I think over on the West Side. It is one of the cases which came into the office soon after I became United States Attorney and I think involved with Workman in a long, voluminous indictment where many individuals, some of which were charged with selling sugar, some charged with selling syrup, some charged with selling cans, some charged with selling machinery that went into the still, and many other charges brought against individuals, many of them connected with very reputable concerns in Chicago who had sold different parts of machinery which went into the make-up of that still. I think there must have been thirty or thirty-five defendants.

Q. And as District Attorney, did you see the various lawyers who called on you representing the various defendants in that case?

A. I remember distinctly some very reputable lawyers came to me.

Q. From time to time did these various lawyers who called on you request that the indictment be dismissed as against their particular clients?

A. I think I remember twenty or twenty-five different incidents of reputable lawyers that came into me and consulted me about that case and insisted that while their clients had perhaps sold some of the machinery that went into the still or the set-up of that still they had no criminal knowledge of anything in connection with or the op-

eration of the still, and therefore they did not think they had ought to come in or be compelled to come in and defend a charge of conspiracy against them, and many of the persons were dismissed out of the case.

I did discuss the matter with my assistant, Mr. Glasser, before they were dismissed. They were dismissed after our conference and with my approval and my consent.

1244 Q. Now as a matter of fact, Judge, from your previous experience in various offices, you knew what was going on in your own office didn't you?

A. I think I did.

Q. And you had a system whereby the various orders entered in the courts were reported to you and laid on your desk each day?

A. Every night we had a report of every order that was entered in any court in the building in any case involving the matters in which the Government was interested, and each morning I would know the different matters to be presented to the Grand Jury.

The various actions of my assistant, Mr. Glasser, were taken up with me by him and discussed with me, and I knew all the orders that were rendered either before or shortly after they were rendered, and they had my approval. These reports that came into my office from time to time from the alcohol tax agents were from time to time submitted to me by Mr. Glasser, Mr. Glasser and I often discussed them.

Q. And what was your function as District Attorney, what did you have to decide when those reports were submitted?

A. I had the final decision of the matter.

Q. As to what?

A. As to whether we would present a matter to the Grand Jury or whether we would withhold it from the Grand Jury. Whether we would prosecute the case, or whether we wouldn't.

Q. Will you tell this Court and Jury some of the things that you took into consideration in analyzing the various reports?

A. Well, about the only intelligent way an answer to that question can be made is to give a brief summary in the manner in which these cases came to our office. Soon after my appointment as United States Attorney I became convinced that the Alcohol Tax Unit was not looking after the big operations—They were looking for the

little people, and they constantly flooded our office
1245 with the small factory people who were cooks, or
people who rented some old store or such. They
never would bring in the individual who really operated
the still.

Mr. Ward: I object to the statement, if Your Honor
please, and move that that answer be stricken as not be-
ing of any probative value in this case, not tending to
prove or disprove any of the allegations in this indict-
ment.

Mr. Stewart: I can follow that up, Your Honor.

Mr. Ward: I make my objection to this.

The Court: Objection sustained.

Mr. Ward: I move the answer be stricken.

The Court: That much of it may stand. I have to de-
termine that you are getting away from the main issues
in this trial.

Mr. Stewart: Your Honor, all I seek to show is that
these reports were discussed between the District Attor-
ney and his Assistants, and they used their judgment, and
I want the witness to tell me, if he will, please, some of
the things that they took into consideration.

The Court: I think he covered that.

Mr. Stewart: He has not fully covered it, Your Honor.
I don't believe he has finished his answer.

The Witness: A. Well, the main thing I took into con-
sideration was whether the report indicated they were
looking for somebody forth while or just some casual.

Mr. Stewart: Q. And in those cases where you decided
not to present evidence to the Grand Jury, will you give
this Court and Jury the discussion you had with your
assistants, if any, concerning the reasons that you had
in your mind?

Mr. Ward: Same objection, Your Honor.

The Court: Sustained. If you want to take the case,
and call the Judge's attention to it—

Mr. Ward: I have no objection where he takes a
1246 particular case, Your Honor.

The Court: What is that?

Mr. Ward: I have no objection, if Mr. Stewart takes
a particular case.

The Court: It is a pretty big order to ask the witness
to answer that question.

Mr. Stewart: Q. Well, I will ask you, Judge Igoe, can
you give us the names from your memory, of any par-

ticular cases where these discussions were held with your Assistants concerning this report.

A. I can't give you the name of the defendants, but I can give you the reference to the case.

Q. Well, do that the best you can, please.

A. It involved an investigation made by the Alcohol Tax Unit. The report was submitted to our office, I think it must have been two feet high, involving about 30 or 40 or 50 people. Mr. Glasser went through the report, and he said he thought there were just a few people involved, that they were bringing in a lot of minor figures. I went through the report and came to the same conclusion. The Alcohol Tax Unit took the matter up with the Treasury Department. The Treasury Department took the matter up with the Attorney General at Washington. They sent a Special Assistant Attorney General out here.

I turned the file over to him, and I said, "Here is a room. You go through this whole file. We will take this case completely out of Mr. Glasser's hands. We will give it to another Assistant."

So he went over the whole thing with another Assistant in our office, and out of the 30, 40 or 50 people, I think wanted the indictment of five or six, those indictments were brought into Court before Judge Wilkerson, by an Assistant, I was with him. I think as the result of all of it, two or three at that time, who were imprisoned, for other violations of the Alcohol Tax Law, were brought 1247 into this Court and given sentences here, to run concurrently, with their other sentences. Two or three of the other minor figures were found serving over in the Penal Farm at Milan, Michigan. They are typical cases from the alcohol tax unit. And that was a case where we tried to separate the financial figures from the minor figures; and they were not satisfied with our action. It went all the way to the Treasury Department, to the Attorney General, for all this purpose and the special investigator came out from Washington to handle it with a man other than Glasser in the courtroom.

Q. Directing your attention to another specific case, do you remember, did Judge Barnes ever inform you of what happened in his Court concerning the agent?

A. Yes, sir.

He told me very distinctly what happened. It was a case before Judge Barnes, and I think it involved some branch of the Hodorowicz outfit, and the attorney for the

defense tried to say something to Glasser and Glasser said "Well now, tell it to the Judge," so they went in the Judge's chambers, and I think the attorney there told the Judge in the presence of Glasser that this case was supposed to be fixed, and Glasser said, "Well, you tell that to the Judge, I don't know anything about fixing cases." So the upshot of it all was that Judge Barnes sent somebody from the Alcohol Tax outfit to come over there and explain the action of the agents in this case. And they made some sort of excuse, and their final story was the agent was inefficient, that they had discharged him, and as soon as I heard that I caused a Grand Jury subpoena to be issued for Mr. Yellowley, to bring him over and explain to the Grand Jury what was wrong with his agent, and why he had been discharged. That Grand Jury subpoena was issued about 11:00 o'clock in the morning and the jury was to convene at two, and before two o'clock the assistant to the Attorney General called me up from Washington and told me that the Secretary of the 1248 Treasury didn't want Mr. Yellowley to testify before the Grand Jury.

It was not part of my duties, while I was District Attorney, to do police work, and it was not any part of my duty to hunt out stills that were operating in order to raid them.

Q. And what was the practice with reference to prosecutions of alcohol violations, when did your office come into the picture?

A. When a report was made in writing from the Alcohol Tax Unit. We did have anonymous communications come in from time to time and we referred them to that Unit.

I remember there was a case that came in that way, through an anonymous report, that I took up with Mr. Glasser, took it up with Mr. Glasser and with the United States Marshal for this District, and with the Alcohol Tax Unit. An anonymous letter came into our office in which it was stated a large still was in operation in the vicinity of 16th Street and Ashland Avenue, I think over in that neighborhood, anyhow, 16th or 17th Street, and stated who was running a still, stated who might be involved in it. Stated also the matter had been brought to the attention of the Alcohol Tax Unit and that no action had been taken, although it had been brought to their attention more than three weeks before. At that moment the

United States Marshal came in and told me he had a similar letter. We then decided that we would make a demand upon the Alcohol Tax Unit to send an agent that we wanted to go out and investigate a case without telling him what the case was. They finally sent that agent over. We gave him that information. He went out to the west side and stationed himself in an alley across from where this still was in operation and there observed the operation of the still, saw the figures around there, saw the machinery moving and stayed there for two or three days, and finally traced a load of alcohol that was taken out of that still down to Halsted Street, and he finally ran the machine loaded with alcohol and its occupants into the curb around 14th Street and Halsted 1249 and there he discovered a Chicago Policeman and one or two other persons and he arrested them, and they finally brought them all into court, they were tried before Judge Barnes and I think the minimum sentence given was five years. I then sent for the Alcohol Tax Unit and I said to them: "Why didn't you investigate this case?" and they said: "Why we have a report over there showing every anonymous communication we got concerning the still." I said: "Is this report in?" And a man here in the office, he said: "I will go back and get my report." And I said: "No, you won't, you will stay here and send over and get your report."

So he sent over and they brought the book in the office, and there in the book was the record of this complaint that had been made concerning that still. That agent was assigned to our office until I went out of office, and as soon as I left the office of the United States Attorney they transferred him to Cleveland, although his wife and family lived here in Chicago and he is over there.

His name is Bryce Armstrong.

Q. Well, did these matters cause a friction between your office, particularly Mr. Glasser and yourself and these agents?

A. There was constant friction there. The result of it was two-thirds of the agents were transferred out of Chicago.

Q. And as a result of these various investigations—

Mr. Ward: Just a minute, your Honor. I want to make an objection to this line of testimony and again move that it be stricken because it does not tend to throw any

light on the cases we are trying here and it is an attempt to inject into this case a collateral issue.

The Court: I will let the testimony stand but don't pursue that line of testimony any further.

Mr. Stewart: It just comes to about its culmination, your Honor, if I may—

Q. As a result of that, Judge, did you and Mr. Glasser prepare citation proceedings against Mr. Yellowley?

Mr. Ward: I object to that, if your Honor please.

1250 The Court: Objection sustained.

Mr. Stewart: Q. Well, that is one of the things I told the Jury we were going to prove and I don't want to proceed if your Honor rules that is not admissible. Does your Honor rule I can't go into the prosecution?

The Court: Why is some separate act against Mr. Yellowley material?

Mr. Stewart: Because we will follow that up; Mr. Glasser will testify that Mr. Yellowley as the cause of that said:

"I will get you, and that this indictment were are now trying is the result of that. It is a persecution."

Mr. Ward: In other words, what he is trying to say, your Honor, is that Mr. Yellowley controls the District Attorney's office and every person associated with the prosecution of this case is doing it to help somebody else.

That is what he is trying to say.

Mr. Stewart: Well, I am unable to see where—

Mr. Ward: That is what you are saying. In other words, you are not fooling me on it. It is the same line of evidence Your Honor sustained the objection to the introduction of that report. Some collateral issue, trying to get into that field and get away from what we are trying—that the defendants are guilty of conspiracy to defraud the United States regardless of who Mr. Yellowley is, or any agent over there.

The Court: I am quite certain Mr. Yellowley did not control Mr. Igoe when he was United States Attorney. There is no one else controlling the District Attorney either at the time Judge Igoe was in there, or at the time Mr. Campbell was in there.

Mr. Stewart: Your Honor, in this case, one of the things Mr. Ward has introduced here, you remember, is that Western Avenue still, then he introduced conversations where Kaplan tells Raubunas they are going to

keep out \$400 a week to protect the still. Well, in defense of that, we wish to show—

1251 Mr. Ward: You are not going to ask Judge Igoe the insulting question if he knew anything about it, are you?

Mr. Stewart: Well, if I can't proceed in my way—

The Court: Proceed, Mr. Stewart. Make your statement.

Mr. Stewart: I wish to point out to the Court, if I may, or, I am able to, the materiality of this friction between the agent, and that involved Mr. Igoe while he was District Attorney and involved Mr. Glasser in determining whether or not he could go ahead with certain cases. It is one thing to have an honest agent hand you an honest report, and it is another thing to have a dishonest agent give you a dishonest report, and let the District Attorney hold the bag, while they are letting the big operators continue to run, and on top of that, this prosecution comes in here and endeavors to charge Mr. Glasser with letting the Western Avenue still operate over a period of months—

Mr. Ward: If there is any dishonest agent Mr. Stewart is insinuating about—I hold no brief for anybody. I called them to the witness stand and I turned them over for cross-examination, whether they have virtue or don't, I put them on this stand as being the ones that worked in this case, and I am holding no brief for anybody.

Mr. Stewart: Well that, of course, we can argue when we get to it, but the point before the Court now is whether or not the witness who was, after all, charged with the responsibility and the discretion whether or not he should be permitted to tell the things he took into consideration. For instance, in determining not to have his assistant, put that big report concerning the Hodorowicz conspiracy before the Grand Jury, the fact he is influenced by the fact he is an assistant.

The Court: Are you intimating now Judge Igoe told Mr. Glasser not to submit this report to the Grand Jury?

Mr. Stewart: That is true.

The Court: Will you ask him that?

1252 Mr. Stewart: Yes. Isn't it a fact, Judge, that you studied that long report, calling your attention to this particular report here (indicating).

The Court: He had undoubtedly hundreds of reports to look at.

Mr. Stewart: Q. The particular report you have in your hand, I will give it the Exhibit number so there won't be any mistake about it. Number 160, wherein Mr. Bailey, special investigator—

The Witness: A. I assume that report contains a detailed statement of what evidence would be submitted which would involve the Hodorowicz brothers.

Mr. Stewart: That is right. Now I will ask you first, was it not your first instruction to your assistant, Mr. Glasser—

The Court: Just a minute, Mr. Stewart. I am suggesting this, it was my impression the testimony that Mr. Bailey submitted this report to Mr. Glasser after he had completed this investigation which was some time after Mr. Glasser and Mr. Bailey had consulted with Judge Igoe.

Mr. Ward: That is my understanding.

The Court: That is why I thought the Judge ought to have a chance to study this particular report to see when it was submitted.

Mr. Stewart: My understanding of that, your Honor, is, Mr. Bailey came here from Washington.

The Court: Just a minute. Let me ask Mr. Bailey.

Mr. Bailey, you have already testified that you visited Judge Igoe who was then District Attorney with Mr. Glasser, with reference to the Hodorowicz brothers?

Mr. Bailey: Yes, sir.

The Court: At that time did you have this report that we have marked Exhibit 160? Did you have this report marked Exhibit 160 with you and did you submit it to Judge Igoe?

1253 Mr. Bailey: I did not, sir.

The Court: That is my impression, there is some other report and Judge Igoe must have seen, I don't think it is fair to the Judge to confine him to this particular question of this Exhibit until he has a chance to examine it, because my impression was Mr. Bailey had not completed his investigation at the time they called upon Judge Igoe, and Judge Igoe said "Go out and complete your investigation", and then "Mr. Glasser, I want to hear further from you, and submit this to the Jury."

Mr. Stewart: That is not my memory of the testimony.

The Court: What is your recollection? Just a minute.

Mr. Bailey: Your Honor, I talked to him but on one occasion in my life, and that was on the 26th of January,

1938; at that time that report was not completed. I had no report with me on that occasion.

The Court: That is Exhibit 160.

Mr. Bailey: That is correct. I turned that report over in Mr. Glasser's office on April 21, 1938.

The Court: That is what I thought; that is what made me confused as to the report.

The Witness: What is the question, as to whether I saw this report?

The Court: The time he was there.

A. I don't recall it, the time he was there, but I did see this report finally, if there is any question about that.

Mr. Stewart: Q. After seeing it and inspecting it with your assistant, Mr. Glasser and studying it, did you come to the conclusion as to whether or not that particular charge, that particular case worked up by Mr. Bailey should be presented by you and your assistant, to the Grand Jury?

A. No, I thought it should be presented as a violation of substantive crimes on the part of the Hodorowiczes rather than dragging in all of these individuals mentioned in this report.

1254 Q. And you were not in favor of prosecuting the conspiracy, that is suggested in that report?

A. That is right.

Q. And will you give us your reasons for coming to that conclusion?

A. Well, I gave them to you before. I will give them to you again.

Q. Well, you want me to repeat, those you have given?

A. Well, the reasons are not any different than what they were before. For the violations of a substantive crime a much heavier sentence can be imposed than for a conspiracy, and I was interested in finally getting the Hodorowiczes into a case where a real substantial prison sentence might be imposed upon them.

Q. What is the difference in the penalty in a substantive offense from that of conspiracy?

A. We have different substantive offenses, you can get many, many years for some crimes, while conspiracy is two years.

Mr. Ward: We will agree that for possession and sale it is five years, and for conspiracy it is two.

Mr. Stewart: Q. Now, Judge, my attention has been

called to a letter which is marked with the next number, 193, will you examine that, please?

(Whereupon witness examines letter.)

Q. Does that bring back to your memory some dealings that you had with your assistant in the Washington headquarters?

A. Yes, sir.

Q. Will you tell about that incident?

A. That is a letter from Mr. Keenan sent to me. Mr. Keenan was a special assistant to the Attorney General of the United States and the letter speaks for itself. It mentions some function or some work he had Mr. Glasser do for him, and he praised him for that and it was 1255 done in a satisfactory manner.

Q. As a matter of fact, Judge, while Mr. Glasser was your assistant, did he render satisfactory and conscientious service to the government?

A. He did.

Q. And in working with him and having him under you as an assistant, did you also come in contact with Judges and other lawyers and various people who knew both of you in order that you might learn Mr. Glasser's general reputation for being an honest man?

Mr. Ward: The government will stipulate that Judge Igoe certainly wouldn't retain a United States Assistant as long as he was a District Attorney who didn't enjoy an honest reputation. The government will stipulate to that and his opinion.

Mr. Stewart: Can't I prove my case?

Mr. Ward: We will stipulate to that.

The Court: Let the stipulation stand and you may also inquire.

The Witness: A. I do know the reputation of Daniel D. Glasser for being an honest and law abiding citizen. It was good.

The Court: Was Mr. Kretske in your office, Judge, at the time you were District Attorney?

A. Yes, sir. He was there before I came in.

Mr. Stewart: Q. Do you know anything about the circumstances under which he left your office?

A. Well, there was some dispute up there and he resigned. I had known Kretske for ten or fifteen years, I had known his father for thirty, twenty-five or thirty years.

I remember discussing a case that has been referred to here as involving Abosketes and somebody connected with him. I do remember sending Mr. Glasser up to the state of Wisconsin.

Q. Will you tell us the circumstances of that, please?

A. Well, Abosketes was a figure, I, in connection with a huge still which had been unearthed up in McHenry County, by which that still was unearthed as the result of the activity of an agent who was brought here from Detroit and he ran the operator of that still down, and Abosketes was one in connection with it. The Alcohol Unit people said they couldn't find him, although he was in Milwaukee, and Glasser got word that anybody who wanted him could locate him up there, and he came and told me he wanted to go up to Milwaukee to have Abosketes arrested and I procured authority for him to go up there, and he went up to Milwaukee to have Abosketes arrested and I procured authority for him to go up there, and he went up to Milwaukee and secured the assistance of the Police Department of the City of Milwaukee, and they experienced no difficulty at all in going out and in promptly arresting the man he was interested in.

Q. Do you remember the name of that man, or could we refresh your recollection on it?

A. Which man?

Mr. Ward: Just a minute, the Judge has said it Nick Abosketes.

The Witness: No, they were after Brown.

Mr. Stewart: Q. Was Kasmarek the name?

A. I don't recall the name. I remember Brown is in there, this name you just mentioned is in there, and Abosketes, but anyhow, they went to arrest this one individual and nobody could find him, and Glasser sent up there and got the assistance of the Police Department of the City of Milwaukee, and they went out and captured him without any trouble.

Q. And he was brought back here and convicted, was he not?

A. Yes, sir.

Cross-Examination by Mr. Ward.

1257 I think I assumed the office of the United States Attorney about June 1st, 1935, the end of May or first of June, 1935. That is correct, I was elevated to the

bench in November of 1938, and sat here in this building ever since as a District Judge.

Q. Now while you were District Attorney your office was up there in the front, 826, was it not?

A. You mean in this building?

Q. Yes, sir.

A. That is right, upstairs here.

Q. Where was Mr. Glasser's office with reference to yours?

A. It was right down next to you. That is what we call the south wing.

That is right, that while I was District Attorney I had men assigned to different duties, and one assignment would be the counterfeiting cases, the mail fraud cases and so on until I distributed all of the business of my office. That is right that from time to time the assistants would come in and they would consult with me and tell me how they were handling their cases. My door was always open to listen to hear anything they had to say.

Q. And after a case would be turned over to an assistant attorney, he would handle that case until its termination, would he not, Judge, without any interference on your part, if it was going all right?

A. If it was going with, in the ordinary course of procedure, that is the way we want it operated.

Q. If nobody would complain to you about a particular case it would go on to its conclusion, and you possibly would hear nothing about it after you once assigned it?

A. Ordinarily that is true.

That is right, that I received my correspondence there all in the morning, and would check over my correspondence and if it had to do with the particular case that some assistant was handling, in due course it would go back to that assistant after I had looked it over.

Q. It was your custom to look over your mail and keep a lookout and watch for things as they were going on, in other words, what I am trying to say, Judge, is, you were an active District Attorney and put in all of your time from your appointment as District Attorney up to the time you were appointed Judge?

A. I think I was.

In the course of my being the District Attorney, there were thousands of reports of all kinds and all natures, sent to my office. That is true, that they were reports

regarding mail fraud cases, counterfeiting cases, federal bureau of identification cases, alcohol tax unit cases, secret service cases, all sorts of cases. That is right, that I would have sent to my office voluminous reports regarding the way the Works Progress Administration and any investigations that were made of offenses of that kind. That is right, that I relied on my assistants to keep me advised about cases from time to time.

Q. Now this Hodorowicz case, you indicated that you were interested in that particular case from the standpoint that you wanted to see the Hodorowiczes prosecuted because it was generally known that they were consistent and persistent violators, that is right, isn't it?

A. That is right.

Q. Do you recall in 1937 Colonel Bailey, Tom Bailey, coming to Chicago and talking to you about the Hodorowicz case?

A. Who is Colonel Bailey?

Q. Well, it is Tom, Colonel Bailey, that is his rightful title, we call him Tom.

A. Well, I think I saw that man once; that is all I ever saw him.

Q. That is what he said, he saw you once.

A. I thought he said that was in January, 1938, you say it was 1937.

1259 Q. No, 1938. He talked to you, and do you recall Mr. Glasser taking him into your office?

A. He came in with him.

Q. Now, Judge, do you know a man name Clem Swanson, I mean Elmer Swanson?

A. Not by name.

Q. Do you know a man named Clem Dowiat?

A. Not by name.

Q. Do you know a man named Kamarek?

A. No.

Q. Do you know a man named H. L. Welch?

A. Those are evidently the names of those defendants, from this report; I don't know anyone of them, if that is what you are trying to find out.

Q. Why do you say that?

A. Because the names are here. Here is Charles Swanson; Clem Dowiat. How do you think I might know them.

Q. Is H. L. Welch one of those?

A. I don't think—

Q. I know you read that report.

A. What makes you think I might know them?

Q. I only asked you—

A. Well, you did ask me, I ask you what makes you think I might know them.

Q. I say you don't know them?

A. I am telling you I don't know him.

Q. That is the point. I say you don't know them, but Mr. Glasser does know them?

A. I don't know anything about them.

Q. But you don't know?

A. You know I don't know them, you don't have 1260 to insinuate I do, either.

The Court: Well, I don't think Mr. Ward is—

The Witness: I think I understand what Mr. Ward is trying to do, Judge.

Mr. Stewart: May I have stricken from the record Mr. Ward's statement Mr. Glasser knows them, because that would be a statement for the Jury, knowing a person, we will argue that matter. May we have that stricken?

The Court: I think Mr. Ward knows, and this Court knows, and everybody else knows Judge Igoe does not know these men in the ordinary sense.

Mr. Ward: I was just leading up, and remarked these were the cases Mr. Glasser handled. I didn't mean to insinuate that at all, and if the Judge thinks that, I want to apologize.

The Court: I think the Judge will accept your apology.

Mr. Ward: The Judge knows I wouldn't insinuate such a thing.

The Court: Be careful in framing your questions now.

Mr. Ward: Q. Judge, you said you were interested in getting the large violators, and you were, were you not?

A. Yes, sir.

Q. And this case where you got this anonymous communication, that was the Nolan case, wasn't it?

A. I think that was the name of the Police Officer. I don't know the other names involved, I am quite sure that was the name of the Police Officer.

Q. And they were brought in and prosecuted by Glasser?

A. Yes, sir.

Q. And he got five years before Judge Barnes, is that right?

A. What do you mean by he got five years?

Q. Oh, well, all right.

A. Judge Barnes imposed a sentence of five
1261 years, I don't understand what you mean by saying
he got five years.

Q. Now, the Workman case, you didn't know that
Daniel Glasser knew a man named Sheenie Albert, did
you, Judge?

A. No, sir, I don't know it now.

Q. And you didn't know that he ever visited or heard
he visited 1062 Polk Street, and tooted his horn, and a
man came out of that place, and who was in that Work-
man case and held a conversation with him, you didn't
know anything about that, did you?

Mr. Stewart: I object to that, Your Honor, that never
happened.

The Court: There is testimony here in this record to
that effect.

Mr. Stewart: That is right, the Jury knows that Mr.
Ward couldn't assume it as a fact, in cross-examination
of this witness. I have just as much right to stand up
and say that never happened.

The Court: I know Judge Igoe don't know anything
about that, of course we all know. In other words, Judge,
I can shorten this whole thing up by saying—

The Witness: Let us see, as I understand the question
of this prosecutor, he wants to know whether I knew
this man Glasser at a certain time was in a certain place
on the West side, and somebody tooted an automobile
horn, and somebody—

Q. One of the defendants of the Workman case.

A. Do you want me to answer that?

The Court: You don't need to answer that. I know
you don't know that.

Mr. Ward: Well, Glasser wouldn't tell you, that,
Judge, if he did.

A. You want me to answer that question?

Mr. Ward: I will withdraw it.

Q. Will you look at this, Judge, and tell us—

A. I want to answer that question if the Judge is not
going to rule it out.

1262 The Court: If you want to answer it, you may.

A. I want to answer that, yes, sir. Of course,
Glasser never told me any such thing, and you know it.

Mr. Ward: Q. Those are the indictments in the Ho-dorowicz case.

A. What about that?

Q. Well, do you know anything about those indictments?

A. Other than that they were presented to the Grand Jury, and they were returned.

Q. Do you know what disposition was made of those two indictments?

A. I do not. I suppose the records here will show it.

Q. I will show you the Workman correspondence, Judge, and ask you is that the correspondence in the case?

A. That is part of the correspondence.

Q. And the testimony has been that that is not your personal signature, but the signature of your secretary appears on there, "M. L. Igoe."

A. That is correct.

Mr. Ward: That is all.

The Witness: Is that all?

Mr. Ward: That is all.

(Witness excused)

BENJAMIN BIRNBAUM, was called as a witness on behalf of the defendant, Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Benjamin Birnbaum. I am Rabbi of the Logan Square Congregation for ten years. I studied at the Jewish Theological Seminary of America, I studied in New York previous to that, and got my training in the American School of New York, from which university I received both Bachelor and Doctor degrees. I know 1263 the defendant, Daniel D. Glasser, approximately ten years.

Q. During that time, were you thrown into more or less of an association with him?

A. Very intimate association, as well as his family, his folks. I have had occasion many times to get well acquainted with him.

He has been a member of the Board of Trustees in my congregation for a number of years, Chairman of that Board two years, and President of the Congregation a

year. His wife is a member of the Board and Past President of the Board of Trustees of our Sisterhood.

Q. Do you know the general reputation of Mr. Glasser as to honesty, integrity and as a law abiding citizen?

A. I am happy to speak unhesitantly—

Mr. McGreal: I object, your Honor. Just answer the question.

The Court: Answer the question, please.

The Witness. A. Your Honor, the question has been asked me, and it has been the privilege, my privilege to know the defendant for more than ten years. He has my utmost—

Mr. Ward: Objection.

The Court: Better not elaborate too much. Answer the question yes or no, please. State what it is, good or bad.

Mr. Callaghan: Do you know the general reputation of Mr. Glasser as to honesty, integrity and a law abiding citizen?

A. One of the finest character and humanitarian—
(Witness excused.)

DANIEL D. GLASSER, one of the defendants herein, a witness in his own behalf, having been first duly sworn, was examined, and testified as follows:

Direct Examination by Mr. Stewart.

My name is Daniel D. Glasser. I live at 6125 N. 1264 Washtenaw Ave., Chicago, with my wife and children.

I have been a member of the bar about seven years—seven and one-half years. I went to school in Chicago, attending Schley grammar school, Lane Tech, St. Charles University High School. I was born in Chicago. I went to the District Attorney's office as an assistant on March 15, 1935. In 1917 I enlisted in the Army, and without almost no exceptions have been in military service ever since. I was in the regular Army, National Guards, and held all the offices from private to captain, and was finally Commander of Company M, 132 Infantry. I am the present captain of the 132 Infantry in the office of Reserve Captains. I don't belong to any organizations in connection with that military service. I am past-Commander of Aviation Post of the American Legion. I have cor

some ex-service man's work and was formerly President of a Day Nursery and Infants' Home in Chicago. Off and on I have been an executive in various civic organizations. I ceased actual work in the District Attorney's office on April 15, 1939, although my resignation is dated some time later. I ceased actual work on April 15, 1939.

Q. I will show you a photostat of a letter which we will mark with the next number 197.

(Document marked as requested.)

I received that letter.

(Thereupon EXHIBIT NO. 197, being a letter dated March 17, 1939, addressed to Daniel D. Glasser, and signed by Wm. J. Campbell, United States Attorney, was offered and received in evidence on behalf of the defendant Glasser, and was made a part of the record herein.)

Thereupon said exhibit was read to the jury.

1265 I did not, during the time I was an Assistant District Attorney, ever accept any money or thing of value in the nature of a bribe. I did not ever solicit any promise or take any promise of money in the nature of a bribe. When I left that office Mr. Ward was the assistant who took over the Alcohol call. I did report to Mr. Ward a list of cases that were mine, in order that he would know the cases that were pending.

Mr. Stewart: Mark this No. 198.

(Document marked as requested.)

Q. I show you a document marked 198, and asked you if that is a copy of the list you furnished Mr. Ward when you left the office?

A. This is a copy of the list I furnished Mr. Ward of the cases which were then pending on indictment. I furnished him with another list, a copy of which I have not here at the present time, of cases waiting presentation to the Grand Jury.

Q. I notice at the top of the page, the letters "DDG:FM", what does "DDG" signify?

A. The practice in the District Attorney's office is for stenographers to put initials at the top of paper, of legal sized copy, of the person dictating it, and right next, her initials.

DDG means Daniel D. Glasser and FM, Frances McGarry.

Q. I will show you now a paper which I will to be marked No. 199.

(Document marked as requested.)

I received that during my service as an Assistant District Attorney.

(Thereupon EXHIBIT NO. 198, being a list of cases, and EXHIBIT NO. 199, being a circular dated August 28th, 1935, and addressed to all United States Attorneys, were offered and received in evidence on behalf of the defendant Glasser, and made a part of the record herein.)

Thereupon Exhibit No. 199 was read to the Jury.
1266 Q. Now, Mr. Glasser, the first case mentioned here in the evidence involves a still where William Workman was defendant on Cullerton Avenue. Directing your attention to that case, did you prepare the matter for trial as against William Workman?

A. I prepared it for trial, yes, sir.

I did not know, as I prepared it for trial, that Mr. Hess was going to plead his client guilty. So far as I know, I first learned that Mr. Hess intended to plead his client guilty, the morning he came into court. Before that morning nobody talked to me about what would be the disposition of that case as to Workman.

Q. And when a plea of guilty was entered, that releases, does it not, of proof of the facts as you would have to prove them before a Jury?

A. Yes, sir.

Q. The only question remaining is that of what should be done with the case in the way of penalty, is that right?

A. It depends on the attitude of the Judge. Some judges want to hear a lot about a case, and others don't.

Judge Sullivan, who had disposition of that case, was informed of the size of the still. He was informed of the connection Workman had with that still. He was given the information I had concerning Workman's connection with the matter. The responsibility is that of the Judge as to the final disposition, as to whether that man should get a penalty or be granted probation. I performed my duty in that case in a conscientious manner. I worked all summer on that case. As far as Workman was concerned, nobody approached me and discussed the matter any way other than as a legal proposition. Nobody gave or offered me any money to influence my action.

Q. With reference to the other defendants in the Workman case,—by the way, was that a case in which you had presented the matter to the Grand Jury yourself?

1267 A. I would like to explain that. I came in the office in March of 1935. I was here a few weeks without anything to do, and Mr. Morgan who testified here, kept pushing me away, although he was told to assign me a call. After I was there a while he said to take a chair and sit in 859 to be out of the way. When I got in 859, there was an attorney there about to resign. His desk was loaded with files and I commenced to work. The Assistant's name was Bosworth. Those files, in fact, had been dead. I collected many thousands of dollars for the Government on them. I had been out in taxes myself there, and knew how hard it was to collect, but I collected many thousands of dollars for the Government. Then I was called in by Mr. Green, who was District Attorney at that time. He told me that in return for my conscientious service that I rendered in the first sixty days, he was going to assign me to a major call. He let me assist Mr. Tappy in the handling of the call, and one of the cases assigned to me was the Workman case, I had nothing to do with it before the Commissioner or about presentation before the Grand Jury. I don't believe I was in the office when it was originally presented. I had the Alcohol Tax Unit assign an agent specially to the office to work with me, for the purpose of ascertaining who the big men were in the case. The agent was Carl Handbach. I understand he is still assigned to this district. He worked on it all summer and had an indictment in June of 1935, and indicted in that case a number of what we used to call raw material men, people who sold material used in the manufacture of illicit alcohol,—such as molasses, sugar and yeast. It is true that after the indictment was returned various defendants were dismissed out of the case. As I prepared for the purpose of moving for these dismissals, I did discuss the matter with my superior, Judge Igoo, from time to time.

Q. Upon whose suggestions or orders, if anybody's, were those dismissals made?

1268 A. Originally talked to Judge Igoo, and found the Judges were sympathetic when it came to convicting the raw material men. I discussed this matter with Judge Igoo, and I even went to Washington and received a letter from the Attorney General, and wrote a letter. I seen Judge Igoo's name as attorney, requesting permission to discuss certain defendants. From time to

time we had further discussion in that case. The defendants were represented by some of the biggest law firms in the city of Chicago. I remember Mr. Floyd Thompson was actually in that case, and there were a number of large substantial law firms involved. We had conference after conference about the question of whether we should proceed with the prosecution of companies like the Clinton, a seven million dollar corporation, over the sale of a carload of sugar to the Cullerton warehouse. I came to the conclusion that there was no intention on their part to violate the law. After each discussion with my superior, I would talk to Mr. Igoe, now Judge Igoe, and we would agree,—he would say, "Go down and dismiss this fellow, dismiss that company." One time I suggested we did not have any letter from the Attorney General's office. I would like to state at this time, it was my understanding about having letters from the Attorney General's office, is a little different from what Mr. Morgan testified to. No assistant has authority to dismiss an indictment without permission or authority of the Attorney General, but he has authority to dismiss certain counts and certain defendants out of the indictment. So when I discussed with Judge Igoe, the dismissal of certain defendants, I was under the impression that Mr. Morgan is now, that you had to have a letter from the Attorney General. But he said, "You have two or three letters giving you authority", so we proceeded to dismiss as I would receive word from Judge Igoe to do so.

Q. Now, with reference to the case, versus Vitale, what is your memory concerning the final disposition of Vitale in this case?

1269 A. Vitale had a couple of cases against him here.

I did not remember that Vitale had twenty-six stills, —I don't remember. I never thought he was such a big shot. We had two cases pending against Vitale, and I had a letter from the Alcohol Tax Unit, where they asked me not to present them to the Grand Jury. One was under indictment, and one was to be presented to the Grand Jury. Mr. Dowd said, "We have got Vitale down in Peoria in a good case. Why not take that case for hearing before the Grand Jury and have it No-Billed? If Vitale would plead guilty,"—may I tell this? Mr. Dowd is talking. "If he pleads guilty, recommend an hour in custody." Vitale got shot. He drove on the farm and

the sheriff said "Halt". Vitale evidently ran and the sheriff shot him, and it took him some time to recover. He was taken to the State court in LaSalle County, and was prosecuted for having in his possession that distillery, and was fined two hundred dollars and costs by the State. My instructions from my superior, Judge Igoe, were that we would only prosecute a man once for each offense. If the State of Illinois saw fit to prosecute Vitale, Mr. Igoe did not feel that the United States ought, also, to prosecute. So when Mr. Dowd told me that Vitale had been fined two hundred dollars and cents in LaSalle County for this very violation, I thought if he would plead guilty, it would be all right. I made a notation, I think, on the file, and came down subsequently, and he plead guilty. I recommended one hour in the custody of the Marshal. I believe you have a certified copy of the conviction. To the best of my recollection I have given you now, my reasons for making my recommendation. My action was not in any way influenced by any bribe or any conversation with anybody outside the court.

Q. While you were in office, did you compile a list of your cases in showing the Judges they were before, and their disposition?

A. From time to time I did.

1270 Q. I will now show you this paper which I will have marked the next Exhibit Number.

(Which said document was marked Defendant's Exhibit Number 200.)

Q. Is that list a list prepared by you from your original records?

A. That is, yes.

Q. And does it cover the periods that are shown by the dates that are written on there?

A. It covers only alcohol cases.

Q. Now since you have prepared that list, did you supplement it with, or rather, did you submit it with an inspection of the records in order to bring those statistics down to the date of your leaving office?

A. Well, I used to prepare that at the end of every year, but when I left the office, it was in March or April and I prepared one for these three months.

I did note a summary of them on this piece of paper.

Mr. Stewart: I will have this marked with the next Exhibit Number.

(Which said document, was marked Defendant's Exhibit Number 201.)

Q. Will you give the Court and Jury a general estimate based upon the percentage as to how your liquor call ran during the time you had it, relating to other cases that were handled in the office?

A. Well, in 1935, when I took over the call for four months I handled it with Tappy, I should say the alcohol call at the District Attorney's office was about fifty percent—well, I was going to say fifty percent of the work, but I would say about fifty percent of the cases which were brought into the office of the United States Attorney during the year 1935 and 1936 were alcohol cases. Well, the narcotics—I think the alcohol had the largest 1271 call, then the narcotics call, which probably had thirty-five or forty percent of the cases, then there was the bankruptcy, counterfeiting and post office mailbox robberies, white slaves, so many of those impersonating federal officers—

Well, after I was on the call for a couple of years, and after we started getting substantial penitentiary sentences, why the call diminished, but it didn't diminish to such a great extent, but it did diminish. I did, during my service of duty, handle other calls than the alcohol call. Toward the latter part of my services I handled half of the bankruptcy call. Bankruptcy frauds and checks from National Banks, thefts and embezzlements from banks which were members of the Federal Deposit and Insurance Corporation; I handled many of Mr. Ward's cases when Mr. Ward and Mr. Moreschi were in here for about eight weeks in 1938. At least eight weeks. And I handled Miss Bailey's call, she was ill during that time and I handled her entire call.

Mr. Ward: Q. What was the date, Mr. Glasser, that you handled my call?

A. I handled your call from time to time when you were not here because of illness, and Mr. Roland would probably be able to tell you about some of those cases.

Mr. Ward: All right.

The Witness: Miss Bailey had the narcotics, and that was the second largest call in the office, and I handled that for about eight weeks in 1938. For some weeks in 1938 Eben, who is an assistant United States Attorney, had been married some time in June, 1938, and went on his honeymoon, and I handled his call and presented his

cases to the Grand Jury. This call was counterfeiting and veteran's act violations. When I was taking on those additional duties, I was also looking after my own call.

I did not know the Western Avenue still was there while it was in operation. The date of my knowledge of 1272 its existence might be about the date of the report, or it might have been just previous to it when the agent might have been discussing it with me. Oh, it was long after the still was raided. There were no arrests made in the Western Avenue still, and no reports are made to the District Attorneys office of cases wherein there are no arrests made.

Q. Well, when that report did come to you, it was not accompanied then by the request for prosecution, or was it, you tell us?

A. Oh, that is—the reports generally have a concluding paragraph which says that it is requested that this case be presented to the Grand Jury, or in some cases it is requested that the Grand Jury's action be withheld.

In that particular case the presentation was made to the grand jury by me, in my official capacity. The result was that finally it was no billed. I did present all of the evidence that I knew of, which was available. I think I did present it in a proper and lawyer-like manner.

Q. Now there has a case been mentioned here concerning Swanson which involved a Stony Island still. You will remember it, when I refer to it as a case where Mr. Roth had a diagram and they were preparing for a trial and Swanson was a defendant and one of the Hodorowicz and Clem Dowiat, do you remember that case?

A. Well, I never saw the diagram before we take it to court here, but I remember that case pretty well.

Well that case I O.K.'d the complaint before the Commissioner and instituted the action. And when we went before the Commissioner. I don't remember Bailey being in the Commissioner's office, although I suppose he was because he says he was. But I do remember Mr. Ritter. Mr. Ritter was the man with whom I had most of my contacts, Mr. Ritter is the investigator in charge of the agents of the Alcohol Tax Unit and he was there in the Commissioner's Courtroom on the day set for the hearing of the case that you are asking me about. And 1273 he came to me and he said "I don't think we have got enough evidence here to win this case," and I

said, "Well, I don't want to lose this case. This is one of those Hodorowicz cases, I don't want to lose this case," I said, and "I don't know what I am going to do." He said, "Why don't you go in and ask the Commissioner to continue the case and in the meantime I am sure we can get more evidence." So I said "All right." He said: "We can present it to the Grand Jury if we don't get any more," and I said:

"No, I don't think I would like to do that if we haven't got the evidence, I don't want to proceed." He said: "Well, get the continuance." So I went in before the Commissioner and I asked for the continuance, and Roth objected, and Roth said:

"I would not object if I thought this was a continuance in good faith, but I am afraid they are going to rush down and indict these people before the hearing comes up and then we won't have a chance to have a preliminary hearing." He said: "If Mr. Glasser gives me his word that he won't present it to the Grand Jury I will agree to the continuance." I said: "I am not going to make any deals with you, I don't know what I am going to do, I don't want to bind the hands of the Government now." So the Commissioner ruled with me and a continuance was granted. After the continuance was granted, another date was set. Before that date arrived, Mr. Ritter came over to see me and we discussed the case and we decided, Ritter and I, that the matter ought to be presented to the Grand Jury, and we did present it to the Grand Jury. The Grand Jury voted a true bill.

Q. And did that case come on in the usual course before one of the District Judges?

A. Well now, it came on on the indictment and I neglected to tell you in my conversation with Ritter, at my office, when we decided to present that case to the Grand Jury, and it was the only one in my experience of four years up there where I did those things, but 1274 Ritter was always so very friendly and so conscientious that, at his request, I did it. He said:

"Now when we get this indictment, if we have not got sufficient evidence to convict these people we can continue it generally because we can get it." He said: "I am sure we can get it." And I said: "All right." We presented it to the Grand Jury and the Grand Jury indicted them and we went before the Commissioner and

dismissed our case, the case was pending before the District Court and we came in before the Judge to whom it was assigned and I think Roth was there, I don't remember, but anyway, on the plea in arraignment day it was put over. I don't remember what order was entered on that date, but it was put over and subsequently I had another conversation with Ritter and I said: "Now this day for trial is rapidly approaching and I don't see this conclusive evidence that you talked about so much." He said: "Well, why don't you strike it off." So I struck it off. I asked one of the clerks upstairs, I think Mike Ontrem to make a motion to strike from the docket with leave to reinstate. Striking with leave to reinstate does not hurt any on the Government's opportunities to convict people, and certainly wouldn't in this case because all of the witnesses were agents.

I did not, before I struck that case off, communicate my intentions to Mr. Roth, or anybody outside of my office. I probably should have, but I didn't, and I had a conversation with Mr. Ritter about that because the date the jury was being picked in this courtroom I said, "Ritter, you know what I did in that Swanson case." I said: "I did it at your request," and I said: "Now Ward is presenting evidence as though I was crooked about it. I would like to have you be my witness." He said: "Oh, there is nothing to it, I have talked to Ward about that four weeks ago, I told him there was nothing to it." I said: "Well, you may have told him there was nothing to it, but it is in my indictment." He said: "I understand the government is going to call me and I will testify to it." And he has been in Chicago ever since and he has not testified.

Mr. Ward: Just a minute, Mr. Glasser, I am not objecting to anything—

The Court: Did you subpoena him?

The Witness: No, I have not.

The Court: He is subject to subpoena in this case if you want him here, you can have him here.

The Witness: He is a government witness.

Mr. Stewart: Can't we argue our case when the time comes?

Mr. Ward: Just a minute, I am making an objection and I want to be heard and the last statement I move be stricken, the last few lines of it, something about the agent.

The Court: What was it?

(Answer read by the Reoprtter, as above recorded.)

Mr. Ward: Yes, "He has been in Chicago ever since and he has not testified." It is not responsive, and I move to strike it.

The Court: That may be stricken. I will say now to the defendant he is subject to subpoena.

The Witness: I am sorry, Judge.

The Court: You have a right to bring him into this court if you wish.

Mr. Stewart: Q. Well now, do you remember those Oklahoma people who were on the stand here, the wife testified, well, both of them did, the Jurkos, or something like that?

A. Jurkos, yes.

It is a fact that they were down in my office and after talking to the agent and to the people I told them to go with directions that they assist me if they could in 1277 finding the owner of the still. I have done that in other cases, hundreds of them. That was part of my method of handling my call to do things such as that.

Mr. Stewart: Now, will you mark this Exhibit 202, and the next number 203?

(Whereupon said documents were marked Exhibits 202 and 203, as requested.)

The Witness: Exhibit 202 was written by me at or about the date it bears, to the person addressed, and signed by me. That is not my signature on No. 203, where it reads "Daniel D. Glasser," it is my initials, it is my secretary's signature. I dictated it. The handwriting down here (indicating) is Mr. Campbell's signature, W. J. Campbell, United States Attorney. He was my superior at the time of this. Exhibit 203 was delivered to Mr. Campbell, who in turn delivered it to me. That notation on it is in his handwriting.

(Thereupon EXHIBIT NO. 202, being a letter dated November 21, 1938, and addressed to Most Rev. Bernard J. Sheil, and signed by Daniel D. Glasser, Assistant U. S. Attorney, was offered and received in evidence on behalf of the defendant Glasser, and made a part of the record herein.)

(Thereupon Exhibit No. 202 was read to the Jury.)

(Thereupon EXHIBIT NO. 203, being a memorandum dated January 6, 1939, addressed to Mr. Campbell and signed by Daniel D. Glasser, was offered and received in

evidence, on behalf of the defendant Glasser, and made a part of the record herein.)

(Thereupon Exhibit No. 203 was read to the Jury.)

1278 Mr. Stewart: Now I am going to call your attention to a case which has been repeatedly referred to here as the Spring Grove case, did you present that matter to the Grand Jury?

A. Yes, sir.

Q. What was that, once, or more than once?

A. A number of times.

Q. Well, it might shorten this a little bit, you heard the agent Mr. White testify as to the matter in which you had him first make a preliminary talk, did you do that?

A. Yes, sir, what I used to do with those special investigators, when they made up one of those cases I would have a blackboard brought into the Grand Jury room and I would give them a piece of chalk and I would say, "Now I want you to read to the Grand Jury your chronological statement of this case" which is that which Mr. Ward and Mr. McGreal were reading to the Jury. That tells the whole case and they would read—each one of these special investigators, they would write on the blackboard, the defendants in the order of their importance, as it showed it in the case, and in this case Mr. White did it. I know he did it at least three times. I don't know how many times he did it.

Q. And in that list did he put the name of Kaplan, Raubunas and Dewes?

A. Kaplan was always first.

Q. And Stanley Slesur?

A. Whoever were the defendants in the order of their importance, or as he deemed the order of their importance, I should say.

I did not in any way restrict him or keep him from telling all that he wished to tell and all that he had in his report.

Q. Did you withhold any evidence in that matter as you presented it?

A. Well, I had no evidence, you know I just had 1279 these witnesses and I let them testify; I didn't withhold any witnesses.

Q. And there has been a man by the name of Frett mentioned and he is mentioned in the report as having

something to do with leasing premises, was he available as a witness as you were presenting this matter?

A. No, he never was available as a witness. I finally got him into my office and talked to him as harshly as I could, and I was going to get a subpoena out for him—now I think I did, I am not sure, but I do know I had his promise to return and he went out with the agent. Now I don't just exactly remember the details of that situation, but it was not on the Grand Jury, it was one of the times I had withdrawn it from the Grand Jury, that is, passed it for a week or two so we could go before the Grand Jury again and I was trying to get Frett.

During that time I did learn from the agent the activity of Dewes. Mr. Dewes, I was informed by Sylvian White, was out telling the people they better not testify against him.

Q. Now before you present the Spring Grove case, is it a fact that you made a request for a stenographer?

A. Before I did? One of the times before I presented it, yes.

I talked with Judge Igoe about that. Well, I had had difficulty in the presentation of that case with witnesses suffering from loss of memory and I wanted to be sure that if sufficient evidence was presented to the Grand Jury upon which the Grand Jury felt they could base an indictment, that that evidence ought to be written down so that it would protect the Government's interest. That is when we went to court, if the witnesses wouldn't want to testify because of some threat of Mr. Dewes, or somebody else, I could confront them with that statement and make them testify to the same things they testified to before the Grand Jury. Well, Cole was the principal witness in the case as White agreed, against the fellows

1280 whom White thought were the principals. And I took Cole in before the Grand Jury and interrogated him and he told a perfect story upon which I am sure the Grand Jury would have returned a true bill as against Kaplan at least. I don't remember exactly what he said about the rest of them. And he left, he left the Grand Jury room, he was out a few minutes when one of the Jurors said to me, he would like to ask Mr. Cole a question, will you recall him? I said "Sure". We recalled Cole, and Cole was asked some questions which he answered them just exactly opposite from the way he had answered them the first time, and then I started to argue

with him about it; he went to tell about his illness, and I said, I was not interested at that time in his illness, I wanted to know when he was telling the truth, I said, "When were you telling the truth", this was the last time. He insisted he talked about his illness. Finally I thought it would expedite matters to listen to his illness before we went into the facts in the Kaplan case again. So he said he was picked up; he testified before the Grand Jury that he was picked up by Agent White from some Hospital and brought to the Grand Jury then; that he had a number of bullets—I don't remember whether he said bullets or shrapnel, in his head. That they were not received as the result of injuries sustained in the war, but that he was subject to convulsions and that he went along for days with a complete loss of memory and otherwise he was normal, and some Doctor had prescribed some medicine for him and since that time his convulsions—well, intervals were greater between the convulsions. Well after that, after I heard that, I took Mr. Cole outside and said to Mr. White, "We can't rely on this fellow, we can't hope to get a conviction on the testimony of a man like this." I said: "I think he is crazy." And I said to White: "I am afraid of this thing, I don't know." I said: Just a minute,—I wanted to ask the Grand Jury—and White—and I went over and had a talk with Mr. Igoo and I told him the situation, I said: 1281 "Here is this fellow Kaplan we have been trying to indict him for some time and we have this fellow Cole here who is the principal witness and I can't rely on him." And he said "Well, tell White he has got to get some corroboration of Cole," so I went back and said to White "I think you ought to have some corroboration, we can't depend on this fellow's testimony." He said: "Why don't you withdraw it from the Grand Jury and we will present it"—in the meantime I will get corroboration and I did, and withdrew it. And I again presented it to another Grand Jury. Well after I left the Grand Jury room, the first time, I didn't know whether to believe Cole or not. He told me he had been treated at the Henrotin and Hines Hospitals and had double mastoid operations, and I called the Hines Hospital, I was active out there in Legion work and I knew people there, and I called them and I said, "What about this fellow Cole?" Well they didn't know him as "Cole," and it took some time to find him, and they finally found his

name was Oster out there and they told me Oster was suffering from traumatic apoplexy and he was subject to seizures, and he was drawing a pension from the government and was absolutely a fellow unreliable because in addition to the fact of his traumatic apoplexy he was an alcohol addict. I got that information from the American Legion office at Hines Hospital, I think Mr. Benson, something like that. I did also check up on the Henrotin Hospital. I learned at the Henrotin Hospital that they had X-rays of Cole and that he had twenty or twenty-five slugs in his brain and they were still lodged in his brain, although the accident had been in 1921.

The Court: In his brain, or in his skull?

A. Well I don't know, Judge; I don't know the difference.

Q. Did he tell you?

A. I think he said in the brain, now I am not sure. I know the difference between the skull and brain, Judge.

Q. I want to know what information you got?

1282 A. I don't remember, I remember Cole told me there was a bullet lodged in the base of his brain.

Q. I am asking you about the information you got from the last hospital?

A. I don't remember whether the skull or brain.

Examination by Mr. Stewart (Continued).

As I presented that case to the Grand Jury it was my desire, most emphatically, to prosecute Kaplan, Raubunas and Dewes, if I had the evidence upon which to do it. I did not make any representation to the Grand Jury that finally acted upon the matter, that Grand Jury, Mr. Gates testified here about it. I personally caused that Grand Jury at least twice, maybe three times—the Grand Jury was not satisfied with the reliability of my man Cole, they were not satisfied, and the last time I remember I brought him in, I had the stenographer there at my request so as to protect the record and that it might be shown what happened before the Grand Jury. And because they were dissatisfied with Cole and his unreliableness, I remember Cole in there, I brought him in there and I only asked him about his physical condition that last time. During that presentation the agent did say something to the Grand Jury concerning the method often used

by men like Kaplan. Always, every agent tells the Grand Jury the principals in these bootlegging cases, how they try to conceal themselves; they will send over somebody to rent a place who has no further doings with the still, all his job is, he maybe gets ten dollars or fifteen dollars to go over and sign the lease, and that is the last you ever hear of him. It requires extensive and very able detective work to detect the operators.

Q. Now I am going to direct your attention to a still investigation in which an agent by the name of Armstrong took part, about what year was that?

A. That was in 1938, I think.

Q. Will you tell the Court and Jury your experience in that matter?

1283 Well we asked for Armstrong; we asked that Armstrong be assigned to our office for some special work, Armstrong's reputation was beyond reproach.

Mr. Ward: I object to that, as far as this case is concerned, your Honor, this witness can state the facts regarding the prosecution of the case without going into any great detail about it. It is immaterial, it is incompetent.

Mr. Stewart: Q. Well I will join in asking that he just give us the high spots of it, Judge, or if I may, I might expedite it by leading a good deal.

The Court: He does not need to be a character witness for Mr. Armstrong.

Mr. Stewart: Well, I don't suppose he does.

The Court: That last part may go out.

The Witness: Armstrong did make an investigation and observe the operator of the still under my direction. He did arrest him. I was home in bed at the time the arrest was made. Mr. Armstrong called me on the telephone late at night, and he said "I have just made an arrest in connection with the 17th Street still, and I would like to see you." I said: "All right, I will come right out." He said: "No, I will come to your house if you want me." So he came to my house, and he brought a policeman with him, a man by name of Nolan, he told me he had apprehended Nolan, and two other people driving a load of alcohol, and that Nolan didn't want to say very much to him. I interrogated Nolan at my home that night, and Nolan finally told me that was his business, he was paying I think \$7.50 a can, and selling it for \$9.00 a can, that he had been a policeman in the City of Chi-

cago for ten years, he received a medal for bravery, and was assigned to the Maxwell Street Station, and he 1284 took a few days off, he told his superior he was going to take some baths somewhere in Wisconsin, but instead, he was picking up the loads of alcohol, and making a profit, he wouldn't tell who he was delivering it to, except somebody's first name. And he dumped the entire thing. I took his gun away from him and I took his star away from him, he had \$3500.00 in his pocket, but I didn't take that from him. Well, Nolan and his two co-defendants were prosecuted before Judge Barnes before a Jury. The Jury brought back a verdict of guilty. I think one had pled guilty, they brought back a verdict of guilty against the two, and the Judge imposed sentence of five years for Nolan, four years for the other, and three years on the Defendant who pled guilty.

Q. Now, in this Hodorowicz matter, do you remember Agent Bailey bringing you a report which has been marked here with a number? Do you remember the report being a report which is here in evidence, marked 160 and 163?

A. I don't know, I don't know what they are marked. I would like to see them.

Q. I hand you Exhibit Number 160 and 163.

A. I think this is the report. I don't have any way of identifying it, my initials are not on it, but I think that is the report.

I remember going in to see my superior, and being accompanied by Agent Bailey. That was in the spring of the year. That report was absolutely presented. It was discussed between me and the agent and my superior. Later on I did use part of that report in making a presentation to the Grand Jury. A conviction resulted from that presentation; an indictment was returned by the Grand Jury, and subsequently the defendants were convicted.

Q. And the first result, as far as the indictment was concerned, was against whom?

A. Well, it was against—I think it was against three of the Hodorowicz and Clem Dowiat. I don't re- 1285 member exactly, you have the indictments here.

Q. And at the time of presenting the substantive offense to the Grand Jury, did you have with you your report I have just handed you?

A. That is the only report I had in connection with that substantive case.

I think it took about a day to try the substantive case. A day to try each one of them, about two days for both cases. Before the substantive case was tried Frank Hodorowicz came into my office and held a conversation with me. He was in my office twice, I think. I know of two times that I remember, but—no, I beg your pardon, he was in my office the day he made his bond, I think on the returned indictment. Then he was in my office I think in July, well I think he was in my office twice in July, once alone, and once with his brother Mike. I do have a recollection of the conversation between us at the time he was in there on the day he made his bond. Well, I think Special Investigator Burns of the Alcohol Tax Unit was present and I had conversations with Frank Hodorowicz in the building and out on the stairs leading to the outside or on the outside there, and this was the first time I had met him, I said, "So you are the famous Frank Hodorowicz who has been a bootlegger and cheating the law for all of these years." And he said, "Yes." And I said, "Well, this time you are going to the penitentiary, Frank." He said, "No, I am not." I said, "Yes, you are, you made a mistake this time, Frank, you sold some liquor to an agent or couple of agents, and this time you are going to the penitentiary and this time you are going for a long time." And that was the general trend of our conversation, and Special Investigator Burns was present. To the best of my recollection the next conversation with Frank Hodorowicz was some time in July, 1938, which was probably a month or so after he was indicted. He came into my office and he sat down and wanted to talk to me about the case.

1286 He said, "What will you do for me if I plead guilty?" said, "I will recommend only five years for you, Frank, if you plead guilty, because that is the maximum under the Statute." He said, "Why? Why?" I said, "Frank, you have been getting away with murder for a long time and now it just caught up with you and this time you have to go." He said, "No, I have not been getting away with murder." I said, "Well, you got away with Joppek's murder." He said, "I didn't have anything to do with it." I said, "Well, you did, I know you did." He said, "I don't know nothing about it. All I know is Joppek was killed in the explosion of a still." I said, "Yes, this time you are going to the penitentiary, there is nothing going to help you." He said, "They haven't any

evidence against me." I said, "Oh, yes, they have plenty of evidence against you." I said, "I will show you what they got," and I pulled out this report and I told him, I said, "Here is where you made a mistake, Frank, and sold a little liquor to Jim Kominakis." I said, "I am surprised at you, a bootlegger like you are, Frank, to sell to Jim Kominakis." He said "I know Jim Kominakis. I seen him here in court." I said, "You also sold to somebody else," and I pulled out two reports. I read from the report, what it said. He says, "My brother, Frank—my brother, Mike, understands these things better than I do. Do you mind if I bring Mike in?" I said, "No." So Mike came in. Oh, some time after, I haven't any way of knowing. It might have been a week or two weeks, after that first conversation.

Mike came in with Frank, I neglected to tell you in that first conversation with me, Frank said to me, "You should not be so hard, you should not be so tough," I said, "Well, I am not sore at you, Frank, I am not angry at you at all, this just happens to be my job." He said, "Don't you like money?" I said, "Certainly I like money, who doesn't like money?" He said, "Well, I would spend ten thousand dollars to get out of this." I said, "Frank, if you
1287 spent ten million dollars, it wouldn't do you any good, you are going to the penitentiary this time." Then that is all of the conversation the first time I remember. Then the second time he came up with Mike and I read the report to him and they were trying to make something of the fact I showed him the report. I may have showed him excerpts from the report. My superior told me many times that the prosecution of defendants is not a baseball game, there is nothing secret about it, if the Government has the evidence against the defendant, they should prosecute it. I have heard him tell that to Miss Bailey in my presence. There is no reason in the world, and Mr. Ward has said so, there is no secret about this thing. You don't have to show reports generally; as far as I am concerned, I don't think there is anything wrong with it. I may have shown Mike, I don't know, I don't want to deny responsibility of something I might have done, I might have shown excerpts to Mike. Well, they said, "We don't think we ought to plead guilty if you are going to recommend five years." I said, "That is what I am going to recommend." And they left.

At the first conversation Frank said, "If you don't want

to take any money yourself, why don't you recommend a lawyer to me?" I said, "Frank, that is the old army game, I tell you who to go to as a lawyer, and then you go to the lawyer and the lawyer is supposed to pay me." He said, "Well, you know." I said, "I am not going to recommend any attorney, you will go and get." He said, "How is Eddie Hess," I said "He is a very good lawyer." He said, "How does he stand with Judge Woodward?" I said, "Fine." He said, "I am going to go over to him." Edward Hess entered the case as a lawyer for the defendants. And following the conversation with Mike, Bailey came into my office and I told Bailey I told Hodorowicz I would recommend five years for him if he pled guilty. And in about two weeks later Hodorowicz came to me and he said, "You know, Bailey was out to see Hodorowicz and Bailey said to Hodorowicz, 'What is the idea? That 1288 damned Glasser must be sore at you, we want you only to get three years and he wants you to get five years, what is the matter? Is he trying to get some money from you?' Frank says, 'Why no'—tells me no, nothing like that." When Ed Hess entered the case as attorney it was tried in the regular way. I think I did, conscientiously and properly represent the Government in the presentation of the case and trying of it. Mr. Hess did not in any way try to influence my conduct as against my duty. When the verdict of the jury came in and the case was up for sentence, Mr. Hess spoke of probation. He said to Judge Woodward, "If your Honor please, I would like to make a motion for probation." I said, "Now, if the Court please—" That is as far as I got, because Judge Woodward said, "This is certainly not a case for probation." After the verdict of the jury came in, of guilty, it was the Judge's responsibility concerning the extent of the sentence. I did not make any recommendation to Judge Woodward concerning what I thought the sentence ought to be. I had previous instructions from Judge Woodward he didn't want any recommendations made in his court room.

Mr. McGreal: Can you fix the time of that last?

A. When he told it to me?

Mr. McGreal: Yes, sir.

A. When I was in office about a week.

Mr. Stewart continues examination.

Since I received those instructions I did comply with them. A man by the name of Yarrío, who has been given various aliases, mentioned in here, was brought into my

office by one of the agents for the Alcohol Unit, I think Carl Hambeck. I think that happened more than once. Yarrio was under indictment and the Alcohol Tax Unit couldn't find him so I asked Hambeck when he was assigned to my office to make a special effort to find Yarrio and he did, and found him and brought him up and I said to Yarrio when he was first brought up to me, similar things to what I said to Frank Hodorowicz. I said, 1289 "Before I get through with you I am going to send you to the penitentiary." He said, "Well, you may send me to the penitentiary, but you can't send me on this one it is a bum rap. They have got the wrong fellow. I think we had some alias. I said, "When I do send you, I am going to send you on the right thing." He said, "Well, I give you my word I am not the fellow." So I think I arranged with Hambeck to have the identifying witnesses brought to my office on one of the dates that the case was set, and they were brought to my office and in my office I asked them about this fellow Yarrio. They said, no, that is not the fellow. "We thought it was him, but that is not the fellow." That is the identification I have had. I have done that in a number of cases where I let the identifying witnesses look at them when I have loud protests of innocence. And when they said this is not the fellow, I went before Judge Woodward and I said, "Judge, our identifying witnesses have looked at this defendant and they say it is not him. Now, we haven't any further evidence to offer against this fellow to implicate him in it except the testimony of these witnesses", and the Judge said, "Well, if that is the case, I will dismiss it for want of prosecution." It was dismissed. During the time I was handling that matter I conferred with my superior regularly. I told him I was going to make such a representation to Judge Woodward. I think it was at his suggestion originally. It was his original suggestion when people protest their innocence and I thought they were telling the truth, I should give them the benefit of the doubt and let them be viewed by the identifying witnesses.

I did not ever drive a car, past any barber shop on Polk Street and blow a horn and signal to anybody in there to come out and confer with me or ride with me, or anything like that.

Q. Now, there is another matter that has been mentioned here in the evidence as having been brought into

your office by agents. That is, Joppek. Do you remember whether or not it ever occurred?

1290 A. I just have a faint recollection of it. The most of my memory has been refreshed by what I have heard here in the courtroom.

Well, Joppek's situation was similar to Jurkas' situation, so far as I was concerned. This Joppek was a fellow they said signed the lease and that was the only evidence they had against him, and they said he had not made a statement and they didn't know anything further about it. And I said to Joppek, "Well, we want to find out who the owner is. Do you know who the owner is" and whether he said yes or no I don't remember, but I did say come back in a week, as I did with Jurkas and I did with hundreds of other people.

I had occasion in the performance of my duty to prosecute Svec before Judge Holly and Judge Barnes. Before Judge Holly, he got an hour in the custody of the Marshal; and before Judge Barnes he got two years. It is a fact that after that he took that two years sentence to the Circuit Court of Appeals and was out on bond. He was arrested going by a still on the north side as was discussed here. I did receive a telephone call where he was on the other end of the wire while I was at the Sherman Hotel.

Well, I was at the Sherman Hotel with my friends, some friends of mine had a convention. Somebody answered the 'phone and says, "It's for you Dan." I picked up the phone and I said "Hello." Somebody said, "Hello Dan?" I said, "Yes." "This is Paul," he said. I said "Paul who?" "Paul Svec, he said, the fellow you convicted a

couple of years ago." I said, "Yes, what do you
1291 want?" He says, "Well. I got pinched again." "Oh,"

I says, "Too bad, Paul." He said, "Yes, they picked me up tonight. I offered them some money," and he said, "They don't want money." "I told them I know you and they said it was okay if I called you." "I haven't got any money with me, I can bring it tomorrow." He says, "I want you to tell them it's okay."

Somewhere in this conversation he said something about Cassarly. I remember that Agent McFarland testified that I asked him why he mentioned Cassarly's name on the phone, but I said, "Why you so and so, I convicted you twice." "If you are guilty this time, I will convict you again," and hung up the telephone.

I called my home—all of the time that I was in the Dis-

trict Attorney's office, I had an unlisted telephone number and was told at my home that my very good friend, Paul, had called me and wanted to talk to me. It was very urgent. She had told him I was at the hotel.

I then called the Alcohol Tax Unit, Mr. Cassarly answered the phone. That was late at night and I said, "Say, have you got Paul Svec up there, Ray?" He said, "Yes." I said, "He called me up." He said, "What does he want?" I said, "Oh, he wants to pay some money." He said, "I don't know what to do." I said, "If the guy is guilty, I said, why just lock him up and bring him over tomorrow morning, we will take charge of him." He said, "Well, we will do anything you say, Dan." That is what he said.

So, the next morning I came down to Mr. Campbell's office, he was only in the office a couple of weeks at the time, I think, and he wasn't down yet when I got down. I wanted to tell it to somebody, so I went over to see Judge Barnes and told him about it. I don't know whether I told it to the F. B. I. before or not, I said, "I don't know what to do." So, I went back to my office and I called Mr. Ladd, Chief of the F. B. I. Investigation. I told him the story. He says, "Well, what do you want me to do?" I said, "I don't know, I am not a detective," but, "I said, I ought to have some protection." He said, "You know what the rule is, that one department was never to be investigated by another. You are the Treasury Department, we are the Department of Justice, we will get in trouble if we start investigating each other." I said, "I don't want you to investigate it, I only want you to protect me." "Well," he said, "I would protect you if I could do it without looking like I am investigating the Treasury Department." "Well," I said, "I have got a little ante room in my office. I want you to send someone over here, and sit him back of the door." He said, "I will do that." And he sent McFarland over. I had seen him before. I don't remember having any cases with him. After Agent McFarland arrived at my office I concealed him. I told him the entire situation and I had him get into that little private office. I had my stenographer, Miss McGarry, go out of the room. Then the agents who had arrested Paul Svec brought him into my office. I said, "You fellows wait outside, I want to talk to Svec alone." I did

talk to him while I was apparently alone in my office and this agent was hidden.

I said, "Paul, when was the last time before you ever called me, Dan?" He says, "I never called you Dan before last night, Mr. Glasser." I said, "Why did you last night?" "The agents told me to," he said. I said, "Where did you get my phone number, I have an unlisted phone, where did you get it?" He said, "The agents gave it to me." I said, "What is this business about Cassarly?" I say this is my memory from what McFarland said. He said, "Why I knew they wanted to throw me in, that is the reason I put it in, I know Cassarly."

I said, "Did you ever see me outside of this building in your life?" He said, "No, sir." I said, "Did you ever try to fix a case with me?" He said, "No, sir." I said, "Did you ever give anybody any money for me?" He said, "No, sir." I said, "Did you ever send anybody to me to offer me any money or any kind of a bribe?" He said, "No, sir." I said, "Why did you do it?" He said, "Well I just got married; my mother is ill. 1293 These agents that picked me up last night said to me if you don't do this thing, if you don't call Glasser and make this offer to him; you know he is going to give you ten years next time." He said, "I got this two years over my head, I was thinking about my sick mother and my wife, I am sorry I did it." And I said, "I ought to punch you in the nose."

I called the agent in and said, "Take him to the Marshal's office." McFarland came out of that office and he said, "Dan, if I hadn't heard it with my own ears I wouldn't have believed it." I said, "Now you got it." That case came before the Commissioner on preliminary hearing on arraignment, and they talked about the secrets that Mr. Roth knew about Svec and of my having an agent behind the door.

I explained it this way. When I got before the Commissioner the agents were sitting around and the judge in fixing the bond asked one of the agents, I don't remember who, something about the case and what the bond should be and the agent did not answer him right away and I said, "Judge, they are entitled to that. They were up on the telephone all night trying to get people to call me up, trying to get people to offer me money. They can't hear very good today." And after the hearing was over, he kidded about it, how he told so many people

around the building how I had an agent behind the door and that Svec was in there. He told everybody what had happened. Svec was discharged at the hearing.

Q. And what was the reason for the discharge?

1294 A. Well, he told me if he made that call they told him he would be discharged, and when they got before the Commissioner they said that all that Svec did was he drove by the building on Wells Street and looked in the direction of the building.

Q. And upon that evidence of course—

A. Well, they said they followed him and they ran after him and he got out of the car and they chased him and finally caught up with him and he discharged him.

Q. Well, now, I am going to refer you to a case that has been called the Beisner Farm. Do you remember that case?

A. I don't have any independent recollection of it. I would have to see the report. I am sure I have not seen the report and I heard him—

Q. The Beisner Farm case; well, without looking at any report, do you remember making an arrangement with Farbers?

A. Oh, yes, I remember that. I remember that now.

When we were presenting the Beisner farm case to the grand jury we were going to run short of evidence on that case on Rabunas and Dewes and I think it was Ritter, Ritter himself, who got hold of this Novak who was to interview Rabunas and he brought him to my office and he said he had a deal with him. I think it was Ritter. It may have been Campbell, I don't know. I think it was Ritter and he said he had got this fellow Farber who is willing to testify against Dewes and Rabunas and he won't testify against Farber and I don't know, somebody else, that was in the case and he will testify against Dewes and Rabunas and I think Beisner, although I don't think we needed very much more evidence on Beisner. We had it. So we went before the grand jury and the grand jury indicted Beisner, Dewes and Rabunas and, but no-billed Wedges, Neiss, Farber and somebody else, four of them were no-billed and three of them were true-billed.

1295 I think I did, at that time, present the case in a proper and conscientious manner. I put all the witnesses before the grand jury that the agent had there, ready to testify. I did not in any way interfere with

their telling the truth, the whole truth and nothing but the truth.

Q. Mr. Glasser, I am going to direct your attention to a case which has been mentioned here, wherein you went over with agent Bailey to the county jail and had a talk with some prisoners. Will you first tell us briefly, did you prosecute those people and do you remember what still was involved? It has been mentioned here, I believe, the Murdock farm, is that it?

A. I think it was up in McHenry County.

That was not a jury trial. That case in McHenry County was a case where Mr. White made the raid and he brought the defendants over to the District Attorney's office and from there to the Marshal's office. I went in to see Igoe and I said: "You know, the trouble in these cases is that the Alcohol Tax Agents don't have the witnesses identify these defendants and when the case comes for trial, they forget." I said: "I think you ought to go with me. Let's go over to the Marshal's lock-up with them on these witnesses here, now, let's get them to identify them right now." So he said: "All right." Then we went over to the Marshal's office, took the witnesses with us, and they identified the defendants in the presence of Mr. Igoe and myself so there could never be any question as to that they suffered from a loss of memory. Then I started to work with White on that case although that was probably outside of the scope of my general authority, yet I did help and when I got to working pretty hard on this case, and White did too, White was relieved of that case and it was turned over to another investigator and then from then on of course the agent did not request my help and I did not do very much on it but I subsequently presented to the grand jury 1296 that case and my best recollection is that twelve people were indicted by the grand jury for that violation. After they were indicted, a number of lawyers came to see me as I remember it, who represented various defendants and I had found out through my working with White, or had a suspicion I should say, through my working with White, that this fellow Nick Aboskicis was in back of that still, so in my conferences with these lawyers I said: "I think we can enter into a deal. I have talked to Mr. Igoe and I think we can arrange it if your defendants will testify against Nick Aboskicis, I think we can arrange some deal."

Q. Will you fix the date of this conversation?

A. If I saw my file jacket on that case I might be able to do it.

Q. As to whether it was before or after indictment?

A. It was after indictment but before conviction. I said we would be more interested in convicting Nick Aboskicis who has been getting away with operating stills so many years, and the Alcohol Tax Unit can't get him and I understand he was under indictment in five different states. He always seems to sneak out. Well, they went back and talked to their clients and their lawyers from Rockford and in those towns out in the western part of the state and they came back and said: "No, these fellows won't do any talking." "All right—"

Before we went to trial one of the defendants was not apprehended, one Alfred Kausanback, he was a man supposed to be an elderly man, I don't know—he was sixty or seventy years old, but we had had him mentioned in a few reports, he was the carpenter. One time he fell in a mash vat and he almost drowned in there, they had a hard time yanking him out, but he had been mentioned in other still cases and we never could just lay our hands on him and I found out that he was from Waupun, Wisconsin and I knew Nick Aboskicis was from Waupun, Wisconsin, so we called in Barney Coonan.

Barney Coonan is special investigator for the Alcohol Tax Unit 1297 who, I was informed, was the fellow to whom all of

Nick Aboskicis had been assigned and up to that point he had not been successful. He was the one that, when they took it away from White, they gave it to Barney Coonan, and I said: "We have not apprehended Kausanback and we are going to trial pretty soon;" And he said: "I will get him." So he left the office and a week later he came in and he did not have Kausanback. I had had the warrant returned unexecuted and had sent it up to the District Attorney's office in Milwaukee with request that Kausanback be picked up for removal and I negotiated with Coonan all of the time, I was after him: "Get Kausanback." And he said: "I can't find him." And I got some kind of an anonymous letter that Coonan did not want to find him and I talked it over with Igoe and he said: "Do you think you can find him?" I said: "Certainly I can find him. A man seventy years old can't be hiding." So he said: "You better go up and get him yourself." So I went up to the District Attorney's office

in Milwaukee and I spoke to the Marshal up there and he didn't know very much about it, as I recall. Well, I said: "I can get him." He said: "Well, go and get him." I said: "He is in Waupun." He said: "That's all right, if you can get him, go and get him." I said: "Where is Waupun?" He said: "How are you going to get him if you don't even know where the town is?" I said: "I will get him. Tell me where he is." So I said: "What is the name of the chief of police?" And he told me, and I said: "Can I use your phone?" He said: "Yes." And I asked him to describe the place in Waupun and he said it was a little town and there was the court house surrounded by a square and I called the chief law-enforcing officer, I guess the chief of police, I didn't tell him who I was and I said: "Is Kausanback around the square?" He said: "Just a minute. I will take a look." He came back and said: "Yes, he is there." I said: "Grab him and throw him in jail. We are coming over to get him." And I sat in the District Attorney's office in Milwaukee while the Marshal went out and picked up Kausanback. Kausanback was 1298 brought back to the District Attorney's office in Milwaukee and he came with Nick Aboskicis's brother, who was going to be one of his bondsmen. I was told that Nick Aboskicis was a sort of Robin Hood up there, he took care of the poor people. He made a lot of money and therefore, in Waupun, everybody protected him, so I had Nick Aboskicis's brother sitting outside while I interrogated Kausanback in the District Attorney's office and got some kind of statement out of him. He would not tell us anything. He would not tell us anything. We tried to get him to call us about who hired him to go out to those stills but he wouldn't say anything. Finally we had a hearing before the Commissioner there. Nick Aboskicis's brother, when he heard I was interrogating Kausanback about Nick Aboskicis, he left the place himself so he was not one of the bondsmen. Somebody else became the bondsman and we had a hearing. I represented the Government in Milwaukee and Kausanback was ordered removed to Chicago and he came to Chicago and we went to the District Court with all our twelve defendants.

Q. Was Kausanback convicted with all of the others?

A. They all pled guilty.

They were all sentenced. After that I had some con-

versation with agent Bailey about going over to the county jail. My recollection is not the same as Mr. Bailey's, although Mr. Bailey may be right about it. I thought it was I that got the letter from Frank Brown it might be that he got it or the Alcohol Tax Unit got it. Anyway after those fellows were sentenced and the Judge had imposed sentences of five years on seven defendants, two and a half years on four defendants and a year and a day on Kausanback, we had some conversations with the defendants. The letter said, as I remember it, it was Frank Brown who wanted to see me. I think Frank Brown wanted to see me, and not Bailey. Now I am not sure. I just think that, and he requested the Marshal to bring Brown in and he brought Brown in, and Bailey and I talked to Brown. Brown said that they wanted to make a deal, that since I had been looking for Nick Aboskicis they were willing to make a deal. They were going to pick one of the twelve defendants and they were going to have him be the fellow who would tell us the story 1299 about Nick and in return for that, all twelve should be allowed to go. I went and had a talk with Igoe and he called—I don't know if he called or I called, but first I had a talk with Igoe and I told Igoe that this probably at first glance looked like a rotten deal for the Government to trade off twelve men who got all these large sentences, for one fellow but that my own ideas were that it would be a good thing and we talked it over and he said I thought I was right. He called Washington. I said: "Now, I am not going to enter into this deal with these people unless I am sure, when I give them my word, I am going to do it, I am going to have it." So he called Washington on the telephone and spoke to Brian McMahon, Assistant Attorney General in charge of the Criminal Division and he told him I wanted to come down, to ask his permission for me to come down and he said I had a proposition to offer which he thought was good and which he thought the Attorney General's office ought to try to help me perform. I came back to my office and called Mr. Herriek and he came over and I think Bailey was there, and Mr. Herriek called up Washington, called the Treasury Department I think and he made arrangements for himself to go down to Washington and talk to the Treasury Department, the Secretary of the Treasury office, with a view to having the Treasury Department okay this proposition. So he went to Washington and I

went to Washington on the same day and we never got to meet down there although we had a couple of appointments, because we spent most of the time warming the benches in the inner office and I finally got in to see Mr. McMahon and he called Lyons over, the Pardon Attorney, and he spoke at great length about the thing and Lyons said:

"You can't make this promise because President Roosevelt just simply won't allow us to make any suggestions. He likes to look into each case himself."

Mr. Ward: Q. Who said that?

A. The Pardon Attorney.

Q. Not the President?

1300 A. Not the president.

Q. I thought it was the President.

A. No. The Pardon Attorney. He said: "The President likes to make up his own mind on these things and he doesn't even want us to make any suggestions, so we can't make any guarantees to what we can do." And I had to convince them how important it was that we go in and they honestly told me that they could not make any promise.

Mr. Stewart: Q. Then did you come back to Chicago?

A. I came back to Chicago and had a talk with Mr. Herrick and he said he had recommended it to his department and I then had a talk with Mr. Bailey. In the meantime my department said: "I think they would let us know if they could do something." And we decided, Bailey and I, to go out to the county jail to have another interview with all of the defendants and we took Miss McGarry and went out to the county jail. They don't have facilities for those kind of conferences, so they took us to the infirmary in the basement in the county jail and there was one or two infirmary attendants there and the guard, the police guard was standing off, and they brought the prisoners down and we talked to the prisoners I think one at a time and we tried to get whatever information we could from the prisoners but we didn't get very far. Bailey said: "Frank Brown said something about Nick Aboskicis having had to run the farm or something." It may be that he said it, but I know that fellow's instructions were to make reports of everything that would happen and I know that fellow never made such a report, at least I never got such a report in the District Attorney's office and I get copies of everything which goes out in the line of reports, they are supposed to go to the District Attor-

ney's office, but I know the defendants told us the other defendants were writing home, I knew what was happening. Every defendant was writing home, that the other defendant was the fellow who was going to do the talking, because they were all afraid when they got out, I suppose,

they would get hurt, so they always wanted to be the 1301 fellow in the firing squad with the blank ammunition, so we had conferences out there and could not get anywhere, Bailey suggested to me: "Make those promises to those fellows. Tell them what we can do. Tell them we can get these commutations for them." I said: "I don't think we can get it over, the way that fellow talked in Washington." "Well", he said, "You can make the promise. They will probably do it." I said: "I am not going to take chances like that—not me—if I give these fellows my word I want to be able to keep it."

The Court: Q. When was that? Will you fix the date?

A. If I could see the jacket of my file I could tell.

Mr. Ward: As to the conferences out in the jail?

The Court: Yes.

Mr. Stewart: Maybe Mr. Bailey can fix it for us.

Mr. Bailey: I can fix the exact date, your Honor. I think it was in July.

The Court: Let me have it.

Mr. Bailey: February 25 of 1938.

The Court: Q. Did you know at that time that Nick Aboskicis was under indictment in the eastern and western districts of Wisconsin?

A. No, sir.

Q. Did you make any inquiry?

A. No, sir. You see my job was strictly prosecuting.

Q. You were interested in getting Nick Aboskicis?

A. Yes, sir.

The Court: All right, go ahead.

Mr. Stewart: Q. Was there any further talk had with the prisoners outside of that one at the county jail that you have just told us about?

A. I don't recollect any more. That is the only time I went out to the jail. I think there may have been one or two more conferences with that fellow Brown but I don't remember.

Q. After your activity in that case, or during it, did you receive any message from Nick Aboskicis?

1302 A. Well, I had a conversation with Mr. Herrick. Mr. Herrick came to me and he said: "Now, we have

an undercover man working in Nick Aboskicis's crowd, and Nick Aboskicis said: 'Who does that redheaded so and so think he is in Chicago, trying to push me around?' He said: 'If he thinks he can send me to the penitentiary, he is crazy. Before I get through with me I will wrap him in a bag and throw him in a ditch.' " And I said to Mr. Herrick: "Those things don't scare me. I am not afraid of that."

Not to my knowledge had I ever seen, in my life, this man Brantman, before he went on the stand. I never had any dealings with him. The first time I heard that he claimed some money was put in his hands by Nick Aboskicis was when I heard it on the stand. I represented the Government in lots of libel cases. I did it conscientiously and tried them on the merits. Kaplan never did get in any automobile with me at any place in my wife. He never talked to me before this case started, or since. I have never talked to him in my life. I first learned from Mr. Ward about Roth going out there into Indiana and having a conversation with that District Attorney Campbell. That was in the early part of July or the latter part of June, when this investigation was going on, about the 15th of June. Mr. Campbell called me over and he said: "I have told those fellows they have got to cut that out, but he won't, and I have instructed Mr. Ward to tell them to cut it out." And the 15th of June Mr. Ward called me in and said: "I have told those fellows they have got to have something on you by the first of July or they have got to cut it out because we know it is interfering with your business and we want them to cut it out." I said: "You know they have been doing it for some time."

Mr. Ward: Q. When was that?

A. That was the 15th of June, 1939 in your office and you said to me at that time—

Mr. Stewart: Pardon me.

The Witness: You are not questioning me now, pardon me.

1303 During the investigation I did have a conversation with the present District Attorney in his office. I had a number of conversations with him in reference to this investigation.

Q. Calling your attention to the time when he showed the report, did that happen?

A. Yes, it did. The latter part of August, 1939.

Mr. Campbell, the present District Attorney, showed me

the report that had been prepared under the supervision of Mr. Bailey concerning this case we are trying now.

Q. Tell us the conversation you had with the District Attorney.

Mr. Ward: The report prepared by Mr. Bailey? Do you understand that question? There was a report prepared by Mr. Bailey?

A. No, I don't know who prepared it.

Mr. Ward: I want you—

A. I am sorry I did not quite understand it.

Mr. Stewart: It may have been my mistake. I said "under supervision of".

The Court: I think my impression was there were two indictments pending in Wisconsin against Nick Aboskitis on February 25, 1938. I will ask the District Attorney's office to check that with the Alcohol Division sometime during the day, to make sure about it.

The Witness: You see I did not get the report from Bailey on that, if there was, Bailey did not report that.

Mr. Stewart: Q. Tell the conversation as you remember it between you and the present District Attorney concerning the cases that we are now trying.

Mr. Ward: I object to that as immaterial, incompetent, what the present District Attorney said to this man about this case.

Mr. Stewart: It is something we are going to follow up that you can see its materiality.

Mr. Ward: If your Honor please, self-serving declarations are not admissible and this is a jury question, 1304 your Honor, for this jury to decide. Now, any statement made by this witness which invades the province of the jury and takes away from them the ultimate facts which they are going to decide.

The Court: I don't care what the District Attorney may have said. The District Attorney is following his duty as a public officer in prosecuting the case.

Mr. Stewart: May we have what was said there, your Honor?

The Court: Yes.

Mr. Stewart: Go ahead, tell us what was said.

The Witness: Mr. Campbell had written me a letter and asked me to come over and see him the latter part of August of 1939 and I came over to see him about four o'clock one afternoon and Mr. Ward was present, Mr. Campbell and I; and Mr. Campbell said:

"The report of this investigation on you is completed now and I wanted you to have an opportunity to see it." And they brought out the report, Mr. Ward handled it, and they showed me various statements that were made by various people and told me certain inferences and when it was all over Mr. Campbell asked Mr. Ward to step out, as I remember it—or might have said it in his presence—he said:

"I want to compliment you, that, after four years of handling the hottest calls in the office, you were able to have such a record. Nobody—"

He said: "Nobody said that you did anything wrong. These inferences they have got in here certainly cannot be used in evidence against you." And I said: "Thank you. I appreciate that very much, Mr. Campbell, but" I said "when is this thing over? I want to start making a living." He said: "It is over right now and I give you my word of honor on it." I said: "Thank you." He said: "Of course, something may develop later which may make me change my mind and if we do get evidence which makes me change my mind I will call you and I will let the fellow who accuses you of anything confront you in my presence with that."

1305 He did not, after that, at any time ever confront anybody to me.

The Court: Q. This conversation was with Mr. Campbell?

A. Mr. Campbell and Mr. Ward.

Q. What part of that recital you just made was with Mr. Ward?

A. None of that. It was with Mr. Campbell, and Mr. Campbell said: "We may present this case to the grand jury as to other defendants and if we do I think it would be a good idea for you to go before the grand jury yourself and tell them that none of these fellows ever offered you any money, nor did you receive any money." He said: "I am probably sold up and down in the street every day." He said: "What public official isn't?" "If I have spent as much time in this office, after I have spent as much time in this office as you, I only hope that they don't say any more about me than they have said about you."

Mr. Stewart: Q. Then did you go before the grand jury?

A. I spoke to Mr. Ward one day and he said: "When

are you going before the grand jury that is investigating this case?" And I said: "Any time". Mr. Campbell had said to me: "Will you go before the grand jury?" I said: "I will shout from the housetops what I did." And Ward said: "When do you want to go before the grand jury?" I had a conversation with Ward previous to that time and Mr. Ward used practically the same language as Campbell and he said: "I want to congratulate you, Dan. Nobody sees you in saloons drinking with these hoodlums. Nobody ever sees you talking with these fellows. I just don't know how you do it."

Mr. Ward: When did this take place?

A. This took place the day you told me to go to the grand jury, or the day before.

Q. As long as I have the date?

A. You have got it now. He said: "I want to congratulate you on it" and he told me all of that story.

When I waited at the outer room for the pleasure of the grand jury I saw Mr. Campbell on that occasion. He 1306 was leaving the grand jury room and he called me off on the side and shook hands with me and he said: "Dan, I knew you were going into the grand jury room this morning and I thought I would go in and put in a good word for you. I wanted to tell that grand jury there was nothing in your official conduct which would require grand jury investigation." I said: "Thank you."

I then went before that grand jury. I had a talk with Mr. Ward at the time that Mr. Ward was presenting to the grand jury, concerning whether my name was up in that investigation before the grand jury as a prospective defendant. He said: "Mr. Yellowley is raising hell because we are not presenting your name and because your name does not appear on the grand jury slip." That conversation was five or six days after you started to present this case to the grand jury.

Mr. Ward: I had that with you?

A. Yes, sir, you had it with me.

Mr. Ward: All right.

A. I said, you had it with me.

(Mr. Stewart continues examination.)

I observed a stenographer taking what I said before the grand jury. I do not have a copy of the transcript myself. I could tell you in substance what my memory is of what I said. When I got in there Ward asked me some prelim-

inary questions, he said to me: "Dan, I don't want you to think I am interrogating you." He asked me about these various defendants, he asked me about Balaban, I remember particularly he said: "You know Henry Balaban?" I said: "Yes, I know Henry Balaban." "How long have you known him?" I said: "Well, we went to the same law school. He went to the same law school I did. He was a kind of hero to us. I was a freshman when he was senior and he was a good speaker." And I said: "That is how I knew him." Ward said: "He is a sort of con man."—Something about "con man" I don't remember. No, that ain't what I mean. He said: "Calling your attention to April 1937, you had some trouble with Yellowley then, didn't you?" And I said: "Yes." He said: "You probably want to make a statement, and 1307 I thought I would give you some place to start from."

So I said to the grand jury that in April of 1937 we had had an investigation which was started by the grand jury and before which grand jury Mr. Yellowley had appeared; that when Mr. Yellowley left the grand jury room he had one of his assistants, Mr. Baker, call the foreman of the grand jury and ask the foreman of the grand jury to come to his hotel, the Congress Hotel room—

Mr. Ward: Your Honor, this is getting into a collateral issue, the same thing they tried to inject into the case, and the Government objected to it and your Honor sustained the objection and I don't see why any different rule applies as to the defendant himself stating this. It throws no light on the issues in this case. It is a collateral issue. It is an attempt to create a false issue in this case and make somebody else the defendant other than the defendants who are on trial, that is what they are trying to do.

Mr. Stewart: Your Honor, Mr. Ward told us—are you through, Mr. Ward?

Mr. Ward: Yes.

Mr. Stewart: I remember Mr. Ward told the jury in his long opening that he made, that he would make a showing, he was going to show the statement Mr. Glasser made before the grand jury. He has not done it. I believe I have a right to get the circumstances.

Mr. Ward: There is a time for rebuttal evidence and this case is not over and Mr. Ward is still given a chance to show the statement, but that statement is not a correct statement, your Honor, because—

The Court: I don't want to bring in any collateral mat-

ters here. I don't really see what bearing it has on it. For the time being that portion of your testimony with reference to what you said about Mr. Yellowley will be sustained. You may tell this jury what you told the grand jury about your connection with this charge in this indictment. I don't care about Yellowley.

1308 Q. When we left for lunch, Mr. Glasser, you started to tell about your testimony before the Grand Jury and the judge ruled that what you had to say about Mr. Yellowley and your troubles with him, can be omitted, or should be. So I will direct your attention,—was anything said, any questions asked you by Mr. Ward concerning Mr. Roth, one of the co-defendants here?

A. Yes, sir.

Well, my testimony was all extemporaneous. There was nothing prepared, I did not know what they were going to ask me. I will relate it as well as I can remember. Mr. Ward asked me something about Mr. Roth, what I thought about Mr. Roth, or what kind of a fellow he was. I said, "He is a lawyer and a very active lawyer; in fact, he is too active. He is the kind of fellow who gets in my hair." I think Mr. Ward asked, "What do you mean? Was there anything he ever did to make him get in your hair?" I said, "No, he is just one of those that gets in my hair." I never was attracted to him and tried as hard as I could in each and every case he had, the same as I did with the other fellows, to get a conviction. As far as I could remember, I beat Mr. Roth in every criminal case he ever tried or represented anybody in.

Then I spoke about an hour and a half. When I was through I said: "Gentlemen, nobody, no lawyer in Chicago has ever offered me any money." "Of course," I said, "I have been offered money by defendants once in a while. I think particularly now of the time when Frank Hodorowicz wanted to give me ten thousand dollars; but no lawyer ever offered me any money or promised me any money." I said: "I don't know exactly what your investigation consists of, so I can only make a sort of general statement to you. If you will be specific and ask specific questions, I will be very happy to answer specifically. I will appreciate any of you gentlemen asking me questions." There was a pause of about a minute or so. No one seemed to feel disposed to ask anything, so I arose and left the Grand Jury room.

1309 I had occasion to meet Mr. Yellowley in July, 1937
I had a conversation with Mr. Yellowley in July of 1937.

Q. Tell us the substance of that conversation, as you now remember it.

A. The Grand Jury I was talking about was the September, 1937 Grand Jury.

Q. I will direct your attention to the conversation you had with Mr. Yellowley in July of 1937, after another Grand Jury matter. Will you tell the substance of that conversation?

A. It was in front there, out in this very corridor. He said, "Mr. Glasser I will get you, if it is the last thing I ever do."

Q. I will go back to the case that was mentioned here, involving Walter Hort. Do you remember who the co-defendant was in that matter you presented to the Grand Jury?

A. Walter Hort and Pete Hodorowicz, I think you mean.

Walter Hort and Pete Hodorowicz were arrested sometime in January of 1937, and were taken to the Commissioner in Hammond. They had a hearing there before the Commissioner in Hammond, and he dismissed it for want of probable cause. Some days later—I did obtain a certified copy of that proceeding.

Mr. Stewart: I will have it marked with the next number, 204.

(Document marked as requested.)

That is the certified copy of the proceedings obtained by me, I got this from the United States Commissioner in Hammond.

(Whereupon DEFENDANT GLASSER'S EXHIBIT NO. 204, being a certified copy of the proceedings concerning Walter Hort and Pete Hodorowicz, before United States Commissioner in Hammond, Indiana, was offered and received in evidence, and made a part of the record herein.)

Well, some days later,—of course, I did not know about this Hammond thing at the time—Mr. Smallwood, as I remember, and another agent came up and asked for the issuance of a warrant against Pete Hodorowicz and

1310 Walter Hort. I would have to make reference to the docket or the Commissioner's file to know exactly the dates on this thing, but we had a complaint issued

and had a hearing before the Commissioner, and the defendants were held to the District Court in January, I think, of 1937. About six months later, I presented the matter to the Grand Jury.

Q. And as a result, the Grand Jury voted a true bill in—

A. That case against Peter Hodorowicz and Walter Hort at the time I presented it.

Q. Did that stand in that condition or was something done by the Grand Jury?

A. I had another talk with Mr. Smallwood. He came up and said, "What happened in that case?" I said, "Well, I think they voted a true bill." He said, "I think you better withdraw it from the Grand Jury. If there is any way you have of not writing the indictment and not getting the fellows indicted, I think you ought to withdraw it, because our office is going to try to work up a big case against the Hodorowiczs, just as you wanted, and they want to use part of this case in that other case. It would be best if you withdraw it."

After that I withdrew it. That is the only reason I withdrew it.

Q. There has been evidence here of a case where Peter Hodorowicz was arrested and was taken before the Commissioner, and Mr. Balaban represented the defendant and made a motion to suppress. Do you remember that, in the case where that motion was allowed?

A. Is that the wrong address on the search warrant?

Q. That is it. Tell us about that, please.

A. I think that was the case where there was two defendants, I think Peter Hodorowicz and Clem Dowiat. I am not sure, but it was one of those Hodorowiczs. I remember the instance as to the wrong address on the search warrant, and Mr. Balaban had made a motion to suppress; and I would like to say at this time, I had nothing to do with the drawing of search warrants. I had changed the practice as it was when I came in the office. The 1311 Alcohol Tax agents would draw the search warrant.

I never saw them until after they were executed.

Mr. Balaban made his motion, it was entered and continued over to the next day or some future day. For this reason, I always asked the Commissioner to allow me time to look the motions over before we heard them, because the defendants always had a chance to draw their petitions and I would come into court cold, you might say, not

knowing what the defense was going to be; and then, to have to present the defense to my superior, I felt I ought to be entitled to some time, and I suppose he did, too, because it was put over until the next day; or he may have heard the evidence that day, I don't remember exactly. The Commissioner allowed the motion and discharged the defendant.

Prior to the time the Commissioner allowed the motion, I did not know what the action of the Commissioner was going to be. I thought he would dismiss it, but I did not know.

Q. There has been testimony concerning an \$800 payment to Mr. Kretske and Peter Hodorowicz testified, as I remember, that he rode up to the North Side somewhere and Mr. Kretske got out of the car and then came back in and said he had given money to you. Did you receive any such money?

A. No. That was not my home. Mr. Ward and Mr. Campbell both told me they knew that was not my home where Hodorowicz said we went.

At that time I was living at 3430 Parker Avenue. It was an apartment building of six apartments. The original statement of Frank Hodorowicz was shown to me last August by Mr. Campbell, says that the place the alleged ride culminated was a court building. I was not living in a court building at the time. There was not a saloon nearby, on the next corner, at that location where I lived. I did not know anything about a defendant in a liquor case, by the name of Albina Zarrattini, a woman. I did not know about those trips Mr. Roth made to Indiana before they were made. I first learned about them when I had a conversation with Mr. Ward last July, and he said something to me about Mr. Roth being a damn 1312 fool, going to Indiana and trying to offer money to the District Attorney.

Q. Now, there has been evidence given here concerning the return of a No-Bill against Raubunas in the Spring Grove case. Did you, in the performance of your duties, present any case in which Raubunas was indicted?

A. Yes, I presented at least one.

That was the Beisner farm case. Of course, in that case, Raubunas, Dewes and Beisner were indicted by the Grand Jury where I presented the evidence. And it was carried on after I left the office. It is a fact that somebody came up and made a present to me of a case of

whiskey. Well, I am told here it was Christmas of 1937. When the whiskey was delivered a fellow came in with a case of liquor and laid it down. I said, "What is that?" He said, "Some of the boys sent it down." I did not know who the person was, making the delivery. I opened the case and passed it out to some of my associates in the office and around the building. I did not take any home. I did not know at that time who it was from. I did have a conversation with Frank Hodorowicz after he was convicted. It was about in March, 1939. My secretary may have been present, I don't remember. It took place in my office, Room 857 in this building. Frank Hodorowicz said: "Bailey has been out to see me time and again. He says if I tell him something about you, he will keep me on the street. As between you and Bailey I like you better, so I will tell you about Bailey and you keep me on the street." I said, "Frank, I don't do business like that. Just a minute." I went to the front office, which was in the same wing Mr. Campbell's office was; I talked to Mr. Canaday, who was the First Assistant District Attorney. I told him of this conversation and of all the things I had been hearing that Mr. Bailey had been attempting to do. I said to him, "I am a little afraid of this fellow. He is willing to spend so much money and will probably tell Bailey some fool story about me. Since he is in this office and may be in the mood of telling a story, he 1313 will give you a true statement." Mr. Canaday says, "They never can pull anything like that." I said, "I am trying to protect myself from a thing like that. I don't want to take the statement from him myself, but I would like to have you take it." He said, "Don't be foolish," so I said, "All right, Warren," and did not take it. That was in March of 1939. I have never been in Mr. Kretske's private law office in 7 South Dearborn Street, in my life.

Q. Did you have any communication with Mr. Kretske as you were handling cases after Mr. Kretske left the office of the District Attorney?

A. I had some communication, conversations with Mr. Kretske. He left the office in 1937. We had been very close friends. I say we had been very close friends, but not any closer than Mr. Ward and Mr. Kretske, but we were close. We had been working together and I was seeing him often, but as time went on, my visits with him, the intervals would get greater until in 1938, for many months I did not see or talk to him.

I did not inform Mr. Kretske after Mr. Kretske was out of office, concerning my actions as District Attorney, and what was being done and what was going to be done in cases I was handling. I never was in Mr. Roth's office up to the time of the preparation of this case for trial. I was not even there until about three months after I was indicted. I was there about twice. I don't know a thing about the Montana removal case mentioned against Boguch.

Q. Now, in the Kwiatkowski case, there has been introduced here a report which came along from the agents after Kwiatkowski was discharged before the Commissioner. Do you remember receiving that report?

A. No, I don't remember that report particularly. I can't honestly say I remember much about that Kwiatkowski case.

If anybody took any money to fix any case I had charge of, I did not know anything about it during the time 1314 I was an Assistant United States Attorney.

Q. This indictment charges you conspired with these people on trial with you and other persons unknown to the Grand Jury. Did you know of any such conspiracy?

A. No, sir.

I did, while I was an Assistant District Attorney, make reports from time to time concerning disposition of cases in my charge.

Mr. Stewart: I will have these marked Numbers 205 and 206.

(Documents marked as requested.)

I made that memo, No. 205, headed "Memorandum for Mr. Campbell concerning No-Bills Returned." It was my practice to make those memos and those reports to my superiors, who have been three superiors, Mr. Green, Judge Igoe and Mr. Campbell. I never made them to Mr. Green, but I did to Mr. Igoe and Mr. Campbell. That one went to Mr. Campbell.

Q. No. 206 appears to be a carbon copy of a letter addressed to Mr. Igoe; and is that the general character of the letters you wrote from time to time, reporting your activity and disposition of cases handled by you, to your superiors?

A. Yes, sir.

"Those reports were complete and covered everything I did as I went along.

Q. The one I hand you does not purport to cover all

the time involved in this case, but are there others covering all that time?

A. I don't have them, just those that Miss McGarry put in out of my personal files, is what I have here. The District Attorney would have the others.

There were such reports made, covering all my activities. It is a fact that Judge Igóe gave me one particular bit of instruction which he gave to all the Assistant United States Attorneys, and put in the form of a card which he had framed. I had one in my office. Mr. Ward had one and all the attorneys.

1315 Mr. Ward: Did I have one framed?

A. Yes, sir.

Mr. Stewart: Q. Did you keep one for yourself?

A. Yes, sir.

Mr. Stewart: Mark this No. 207.

(Document marked as requested.)

Exhibit No. 207 is a copy. I had it typewritten. Mr. Ward will recognize it, I know he will. I did, in the preparation of this case for trial, obtain a certified copy of the conviction of Vitale in the State Court.

Mr. Stewart: Mark this No. 208.

(Thereupon document was marked as requested.)

Exhibit No. 208, is the certified copy I obtained.

Mr. Ward: The Government has no objection to that, but I cannot say that I did have it framed.

The Witness: No, you did not have it framed. That is one thing you did not frame.

Mr. Ward: I would not move to strike that remark, Dan. I would not dignify it by striking it.

The Witness: A. Well, I wouldn't get in a fight with you, I would get bawled out.

The Court: Let us conduct this hearing in a dignified manner.

Mr. Stewart: May I read this, your Honor?

The Court: Yes.

Mr. Stewart: (Reading Exhibit No. 207).

Thereupon there was offered and received in evidence
DEFENDANT GLASSER'S EXHIBITS NUMBERS 205,
206, 207 and 208.

1316 Mr. Stewart: Q. Now, Mr. Glasser, I have endeavored to cover what struck me as the high places in the case produced here, and have asked you about your activities; and without taking up further time, are you

now ready and willing to answer as to any conduct of yours which may have been questioned?

A. Yes, sir.

Mr. Stewart: I will turn you over for cross-examination on that basis.

Cross-Examination by Mr. McGreal.

I live at 6125 N. Washtenaw Avenue since the latter part of September, 1939. Prior to that time I lived at Michigan City, Indiana, last summer, and prior to that 3430 Parker Avenue, Chicago. I lived at 3430 Parker Avenue all the time I was in the District Attorneys' office. I moved into 3430 Parker Avenue on the 1st of May, 1935. I did not graduate from Loyola University. I finished there in 1925. I did not graduate from DePaul, not from either university. I finished Loyola in 1925. I was admitted to the Bar in 1932. I was in some business from 1925 to 1932, not connected with the law profession. I was the Assistant United States Attorney in charge of the seizure of the still on the Murdock farm in McHenry County. I think Mr. Cloonan of the Alcohol Tax Unit was the agent in charge of the case. It was Mr. Sylvian White originally, but Mr. Cloonan wrote the report. He made the seizure and Mr. Cloonan wrote the report. White was the man from Detroit referred to yesterday as a good agent. He made an effective investigation and as a result twelve men were convicted in this court. Mr. Bailey was correct in stating that he had a conference with me regarding Mr. Brown, who was involved in that case—at least one conference was held in my office, and one at the County Jail, where my secretary was present. I don't remember if we got a signed statement, or what it was. I could not say positively, I don't remember, if Brown did state that Nick Aboskitis was connected with that 1317 still on the Murdock farm. I don't remember. I heard Mr. Bailey testify. He testified to that. It is probably true. He was probably correct. I think that is right. After that conference with Brown and other conferences with the twelve prisoners, I went to Washington. I don't know when it was that I went to Washington,—it was during the time they were awaiting removal of the various prisoners after their conviction. I had a conference in Washington, in the office of Mr. Brian

McMahon, the former Assistant United States Attorney General. The Pardon Attorney was present. We had a discussion regarding the twelve men who were convicted in that case. I was not successful in my application to reduce those sentences.

Q. And therefore, did not need this information you got from these twelve prisoners and Mr. Brown, is that right?

A. Well, I suppose the answer is no. I did not need it.

Q. You did not need it?

A. I suppose the answer is no to that. It is hard to answer that question.

I heard about Nick Aboskitis' connection with the Murdock farm in McHenry County. I can't state the time. I will have to make it with reference to the seizure. That information did not come to me as a result of that conference with Mr. Brown and Mr. Bailey.

Q. You knew about it before?

A. I knew about it from the agent.

Q. Prior to the indictment in this case I referred to?

A. When you say, did I know about it, I don't know what you mean.

Q. Did you have any knowledge of Nick Aboskitis' connection with the still on the Murdock farm in McHenry County, prior to the time the Grand Jury returned the indictment naming those twelve men?

A. If you are asking me about legal knowledge, I don't know what to say.

Q. You don't have to say anything. Did you have any knowledge?

A. No.

Q. When did you first receive any knowledge 1318 about Nick Aboskitis' connection with that still?

A. I would have to explain that. What do you mean by "knowledge"?

The Court: I think you know what he means.

A. I don't know for this reason—

The Court: Q. Did you have that information?

A. Yes, I did.

Mr. McGreal continues cross-examination.

After I had that information I journeyed to Wisconsin. I went to Milwaukee, Wisconsin. I was sent by my superior. I did not tell my superior I was going to arrest Nick Aboskitis. I heard my superior testify. It was not his impression that I was going to Milwaukee to arrest

Mr. Aboskitis. I went up to Milwaukee to get man by the name of Kausanbach.

Q. Did you meet a United States Attorney in Milwaukee by the name of Keller?

A. I don't remember his name, I met some agent.

I did apprehend Kausanbach. He is an elderly man, I would say seventy. I did not bring him back. I did not go to Waupun, Wisconsin, as a result of my efforts to bring him back. I did telephone to Waupun, to the chief of the law body there, I don't know whether he was chief of police or what.

Q. As a result of your telephone call to Waupun, Wisconsin, Mr. Kausanbach was arrested, was he not, and tried with the other eleven in that case?

A. They were not tried, they plead guilty.

I don't remember if all of them entered a plea and were disposed of on the same day. I do not remember whether or not Mr. Kausanbach was disposed of separately. I think he was disposed of at the same time. I do not remember presenting that case to the Grand Jury in this District, but if I saw the file I might remember it. I do not remember how many indictments arose out of the seizure of the still on the Murdock farm in McHenry County. I don't remember if 1319 there was one indictment. I don't remember if there was more than one. I still say I don't remember if there were two. I still say I don't remember if there were three. Nick Aboskitis was not indicted. Not to my knowledge was his matter ever presented to the Grand Jury of this district. Not to my knowledge was he ever arrested in this district.

Q. Did you know he was subject to two indictments in the state of Wisconsin? At the time you were up there?

A. My only knowledge was from Mr. Bailey, and he did not give it to me.

I do not know William Brantman. Not to my knowledge did I ever see him in my life.

Q. What do you mean, not to your knowledge?

A. Well, I am pretty active in civic affairs, and get around to a lot of places.

My best answer is I have not seen him, I don't know him. I do not know William Brantman. I am pretty sure of that. I saw the man here on the stand. Not to my knowledge did I ever see him before. I don't remember him. When he walked in I asked if they knew who he

was. Not to my knowledge did I ever see him prior to that time.

Q. What do you mean, "not to your knowledge"?

A. I don't recall, that is all.

I might have met him, I handled thousands of people up here. I don't remember him at all. I don't know the building where his office is located. I do not remember what address he gave. I don't remember if he said 10 South LaSalle Street. Really, I don't remember. I belong to the American Legion. I never did see Mr. Brantman in connection with any of the Legion affairs. I do not know of any connection he might have with the Legion. There is a Federal Post of the American Legion, I have been to that Post, too. I met some of the officers of that Post. I never met Brantman there. I never saw him, insofar as I know.

I do not know Albina Zarrattini.

1320 Q. Did you have any conversation with her?

A. My answer would be the same. I was told in this room, here, that she was a defendant in a case I prosecuted in this district, but I don't remember her. I don't remember her. I think Mr. Ward stated what disposition was made of her case, but I don't know. I don't know. I never did make the statement that "Albina Zarrattini talked too much," and, "take the six hundred dollars back."

Q. What was that message that Nick Aboskitis sent back after he learned you were searching for him in Waupun, Wisconsin?

A. With Mr. Herrick?

Q. The message you talked about on direct examination, state it the way you stated it this morning.

A. I might not get the commas in.

Q. Well, leave out the commas.

A. Mr. Herrick came to my office and said, "I have an under cover man"—

Q. Just state what the message was that you testified to this morning.

A. I am trying to tell you.

Nick Aboskitis was quoted as having said, "Who does that redheaded so-and-so in Chicago think he is?" He called me redhead. Not to my knowledge had he ever seen me. I never had any business dealings with him. I had never met him. I never saw him before. I knew he had some connection with the Murdock farm.

I don't remember the case that Pete Hodorowicz was in with Walter Hort.

Q. On January 12th, 1937, that you talked about on direct examination?

A. Yes.

Q. You presented that matter to the Grand Jury in June of 1937?

A. I would have to see the records to answer that.

There is a stipulation in the record that I presented the matter to the Grand Jury in June of 1937, and 1321 that the Grand Jury voted a true bill; I remember that. At my request the matter was withdrawn without indictment. It might have been the next day after the Grand Jury voted a true bill that I withdrew the matter, I don't remember. It was not a year after. The Grand Jury only sits for one month. I don't know when I withdrew it. I do not remember other than what Mr. Smallwood told me. He is dead. I do not remember Mr. Donohue, who testified here. I don't remember seeing him on the stand.

Q. He testified, do you remember, that he was disguised and came up from Indiana and followed the Hodorowicz and took them to Hammond?

A. I remember.

I don't think I talked to him after I withdrew it from the Grand Jury. He is still alive. I do not remember Clem Dowiat, No-Bill. I do not remember that Clem Dowiat was arrested as he was coming from the still at 120th and Ashland Avenue, by Agent Amis. I do not remember presenting that matter to the Grand Jury.

Q. Do you remember seizure of the still at 120th and—

A. You will have to tell me the name of the case. I don't remember all those things unless I know the case by name.

Q. Do you recall the case where Mr. Balaban appeared to suppress the evidence?

A. Is that the one with the wrong address on the search warrant?

Q. 118th Place, did they have the wrong address?

A. They had the wrong address.

They found a still when they went to execute the warrant. I think they found a still next door to it. They did have a search warrant for one of the stills. They raided the wrong one. That was not my contention before the Commissioner. I represented the Govern-

ment. I did resist that contention. The Commissioner sustained the defendant's counsel, as he should have done. That is right, I introduced here a certified copy of the discharge out at Hammond before the Commissioner.

Q. Was that because the men were discharged at Hammond? Was that the reason you did not proceed with the case?

1322 A. That was not the same case.

Pete Hodorowicz and Walter Hort were the defendants in Hammond.

Q. Who were the defendants in the Grand Jury's true bill that I am talking about?

A. I don't know what you are talking about, which one you have reference to. This was the one I withdrew, Peter Hodorowicz and Walter Hort.

Q. Are these the same two that were defendants at Hammond?

A. Yes, that was the same case. I thought—

Q. It was the same case?

A. I beg your pardon?

That is not why I did not go ahead, because they were discharged at Hammond for want of probable cause. I will say that I did have a conversation with Miss Jeffrey regarding the Hodorowicz indictment, because she told you that. I don't remember that I told Miss Jeffrey to mark her records on the Peter Hodorowicz, No. 31013, and 31014 was the same case as this, my answer is only yes, because she said so. I know that No. 31013 and 31014 charged Hodorowicz with the possession of 35 and 25 gallons of alcohol. I knew then that those indictments did not cover the arrest of January, 1937, and I know it now. The first time I met Frank Hodorowicz was after I indicted him, I think in June of 1938. The dates I can't remember very well, I had too many cases.

Q. Was that after the case had been disposed of before the Commissioner, of the still at 120 East 118th Place?

A. You got me on those addresses, Mr. McGreal. Is that where they had the wrong address on the search warrant?

Q. Did you meet Frank Hodorowicz for the first time after that case had been disposed of by the Commissioner, on the still at 120 East 118th Place?

A. If you tell me the date it was disposed of, I will—

Q. Don't you know when it was disposed of?

A. No.

1323 Q. You were furnished with a bill of particulars in this case, were you not?

A. I hired a lawyer. He was worrying about that.

I was worrying about it, I didn't sleep three months. I examined the bill of particulars. That gave me the date, but—

Q. Can you tell me if you met Frank Hodorowicz for the first time after that case had been disposed of by the Commissioner, on the still at 120 East 118th Street?

A. I can't tell you unless you show me the record.

Q. You have no recollection of the dates?

A. I have an independent recollection of when I met Frank.

I lived at 3430 Parker Avenue in September of 1937. Oh, yes, I do remember that.

Q. That was the night before this case had been disposed of by the Commissioner, was it not?

A. If you will show me the records—

Q. If the records show the case was disposed of on the 23rd, is that correct?

A. I would say the night before was the 22nd, yes.

Q. If Frank Hodorowicz said he met Kretske the night before and Kretske said, "You have to have the \$800 to-night or your case will be thrown out before the Commissioner," is that correct?

A. What Frank Hodorowicz said to Krestske? I wouldn't know.

I did not meet Mr. Kretske in front of that apartment that night. I did not ever meet him in that neighborhood. I did meet Mr. Kretske at night at some time, I imagine I did since he left this office. I did not see him very often. I did not go out nights with Mr. Kretske, not twice a week, not twice a month. I don't think in the evening. I will answer yes, once in six months, more than once a year. I think I am safe in saying that after Mr. Kretske left the office I never met him at night. I never, at any time, at night, after he left the office. I did meet him during the day, as often as I would bump into him, if we were walking on the same street. I don't know how often

1324 he and I would be walking on the same street, I can't answer that question. I had no stipulated time to see him. After he left the office, I don't believe I ever rode in an automobile with him.

Q. Are you sure of that?

A. I am not sure of anything, except that I am on trial. I would meet Mr. Kretsch from time to time and have conversations with him. I did not meet Mr. Roth occasionally. When Mr. Roth got out of my office, I was always happy. I told Mr. Roth that Mr. Bailey got run out of a court room down South, after I left the office. I did tell him that.

Q. Mr. Roth said it was four or five months before he went down to Indiana.

A. I can't be responsible for what he says.

Q. Was he right when he said that?

A. I don't know. I left the office on the 15th of April.

Q. You heard Mr. Roth say you told him that Mr. Bailey was run out of a court room down South, and that it happened four or five months before September of 1938?

A. Yes, sir.

Q. And you don't know whether Mr. Roth was lying about that?

The Court: Did you make that statement to Mr. Roth?

A. Yes, sir.

Q. When?

A. In the summer of 1939.

Q. Where did you get that information?

A. I got that information through some rumor around the building.

Q. From whom did you get it?

A. I don't know, there are lots of rumors going around all the time.

Q. Did you make that statement about that time? Don't you know?

A. I think it is true, there is no question about it.

Q. Why do you think it is true?

A. Because I heard it so much, Judge.

1325 Q. Was the person who told you, someone in whom you had confidence?

A. No.

Q. But you still believe it?

A. Rumors that are repeated so often usually are true. Mr. McGreal continues cross-examination:

I do not remember the Kwiatkowski case. I remember Kwiatkowski testifying. I do not remember when the case report came into my office. I may have seen the case report introduced in evidence. I don't know that that report showed that Kwiatkowski had \$4400.00 in the South Chicago Trust & Savings Bank. I probably didn't even

read the report. It is not true that when a sum of money is found in the possession of a defendant, that the Government will seize it. That is absolutely not true.

Q. That \$4400.00, or no part thereof, goes to the Government?

A. That money is not ear-marked for the Government.

Q. Is there not a lien on the bank account at the South Chicago Trust & Savings Bank—

A. I don't know a thing about it.

I heard the Cashier testify. I assume you don't mean the knowledge I received in this room. It would not necessarily be my duty to know if that case report showed he had \$4400.00. I had case reports coming into the office every day in stacks. My secretary, Miss McGarry, would handle them. I was quite busy. When a case report would come in, on Kwiatkowski, for instance, when Kwiatkowski would be arrested, they would bring in a letter saying, "These are the facts upon which we made the arrest, and a case report will be furnished you some future time." We would go before the Commissioner, and after the Commissioner discharged him and then the case report came in, I wouldn't even read it. I didn't have time, I was too busy. However, if Mr. Ritter—I do not remember the Kwiatkowski case report coming in. I do not remember the hearing before the Commissioner. I do not remember asking for a continuance because I was waiting for information. I don't remember if I did not ask for a continuance. I did not know that Tony Horton was the bondsman in the case. I did know that Mr. Balaban was the lawyer representing Kwiatkowski if he was in the courtroom. Not from my independent recollection do I remember Mr. Balaban filing a motion to suppress. I do not remember that case, I have no independent recollection at all.

Q. You tried the case before the Commissioner, didn't you?

A. Yes, hundreds of them.

Q. Do you remember now that the Government lost that case?

A. I know, because you told me here that it did.

It was not the practice in some cases, in my experience, where the Commissioner had discharged a defendant, to present the matter to the Grand Jury and get an indictment. It never was my practice. It is possible to have it returned to the Grand Jury even though they were dis-

charged. I wouldn't know if I at any time presented the Kwiatkowski matter to the grand jury. I did not receive a supplemental report by Mr. Goddard, giving me additional evidence.

Q. You don't recall the case at all, do you?

A. I can explain, if I may.

When a man was discharged by the Commissioner, I probably would have read the report, and I would have no further interest in it; but if Mr. Ritter felt the case ought to be presented to the Grand Jury, he would probably come and see me personally. If a supplemental report came in, my secretary would put it in the file with the regular reports, and I wouldn't even see it. I was too busy to read those reports, except those I was prosecuting. I was not prosecuting this one, not after the Commissioner discharged them. I may not have ever read the case report. It was not in my possession when I had the hearing. The matter was disposed of and then the case report came in. I suppose my secretary put it in the file, the same as she always did.

Q. Did Agent Goddard discuss that case with you 1327 with the view of presenting it to the Grand Jury?

A. Mr. Goddard had no authority to—

The Court: Did he?

A. No.

Mr. McGreal: Q. Did you discuss it with Mr. Ritter?

A. I don't remember.

Q. Did you discuss it with any member of the Alcohol Tax Unit of the Treasury Department?

A. I started to answer, and you wouldn't let me.

Not to my knowledge did I discuss it with any member of the Alcohol Tax Unit of the Treasury Department. As I sit here now, I have no independent recollection of the case. I heard Mr. Kwiatkowski testify that the case cost him \$1075.00.

Q. Tony Horton was there when the case was disposed of before the Commissioner, was he not?

A. What I heard—

Q. Tony Horton was there when the case was disposed of before the Commissioner, was he not?

A. I don't even remember Kwiatkowski being there.

Q. Now, do you remember the seizure of a still at 120 East 118th Place?

A. Where they had the wrong address?

Q. Do you remember that case?

A. That is the one, I only have it in my mind.

Q. There was a case where Peter Hodorowicz and Clem Dowiat were arrested, and charged with possessing that still, and John Wrablewski escaped. Do you remember that case?

A. I don't remember that way at all.

Q. This was a case of the seizure of the stills adjoining each other.

A. No, only one still.

That contention was raised I think by Balaban, 1328 who was the lawyer. If you will let me see the paper I can tell you. I guess I did have an argument with Balaban on the law on that matter.

Q. What happened to the case?

A. What happened to this?

Q. What was the disposition of the case?

A. Don't you want to hear the wording of it?

Q. What was the disposition of the case?

A. The motion was allowed.

Q. You do remember that case very well, don't you?

A. I remember the case very well, if you will let me explain it.

Q. You can explain it on redirect. You don't remember that case of Kwiatkowski?

A. I don't remember.

I don't remember the case of the arrest of Peter Hodorowicz. I do remember a charged placed against them as a result of that case. That is right. I have a recollection of that case distinctly.

Q. You remember an explosion of a still at 119th Street, do you remember anything about that?

A. I never had them by the addresses.

I had them by names of defendants. I remember Elmer Swanson, but I don't remember Del Rocco. I don't believe he was a defendant when I was in there. I remember Agent Goddard and Smallwood and Frank Joppek in my office.

Q. Right after that still exploded, not long after it; do you remember that?

A. I don't remember it.

I don't remember it, I don't remember telling Agent Goddard and Smallwood at that time: "We don't arrest guys for that." But I probably said it. I heard Christ Del Rocco and Elmer Swanson testify they paid five hun-

dred dollars to Tony Horton so that they would not be arrested.

Q. They were not arrested in that case, were they?

A. I was not the detective. I was the lawyer.

1329 Q. You were the detective when you took the sixty-seven year old man and brought him back from Milwaukee?

A. I was but it was an indictment and I knew the agents were trying to fix the case.

Q. And Brantman winds up with three thousand dollars of Aboskicis's money which he gave to Kretske?

A. He was not there.

Q. Didn't you say you heard the witnesses testify?

A. And I say that I saw what Brantman looked like too.

Q. You heard Kretske say he recommended them for the cooperation, didn't you?

A. But I heard Kretske say he did not get the three thousand. I believe Kretske against Brantman.

Why certainly I believe him. I never saw Brantman.

Q. Sylvan R. White was the agent in that case?

A. In which case?

Q. The Murdock farm case, the McHenry farm case?

A. Could I see the report in that case?

I think White was the agent but they took it away from him and gave the case to Cloonan. He was a fine agent. That case he handled was done very well and that is the reason they took it away from him. I don't remember who was the agent in the Spring Grove case. I think it was Sylvan White. He testified before the Grand Jury. He was a good agent.

Q. Any case he brought in was a good one, isn't that right?

A. That is a conclusion.

Q. You just said any case he brought in was a good case didn't you?

A. Yes, I said it was a good case in the Murdock farm case.

He did not present to me the evidence for indictment in the Spring Grove case. He gave me the case report. I read the case report. I don't know the defendants' names.

I don't remember the defendants in the case. I
1330 handled thousands of cases. Yes, thousands of them in this building.

Q. As a matter of fact you handled ten hundred and fifty-eight cases in all the time you were here?

A. In the District Court?

Q. In the District Court.

A. That's right in the District Court.

Q. There wasn't any thousands of cases.

A. Thousands of them.

Q. Ten hundred and fifty-eight cases.

A. This note we had today said I had ten a day.

Sylvan R. White testified three or four times before the Grand Jury in the Spring Grove case. Joe Cole testified before that Grand Jury. That was my duty to bring to the attention of the Grand Jury the fact that he had some mental disability. I told White I thought Cole was crazy, and I did so. And I thought he was the principal witness in the case.

Q. And yet you indicted him?

A. I had to indict him.

Q. You indicted a crazy man in that case, didn't you?

A. Do you mean I indicted him?

I did not tell the Grand Jury, under the rules of the Department of Justice, crazy men when known to the assistant district attorneys were non-indictable. Can I tell why? It is true when I have knowledge of the fact that the man is insane that under the rules of our department, I should not indict him, and I have a duty to tell the Grand Jury. I have a duty to tell the Grand Jury that the man is insane and he should not be indicted. Can I tell why he was indicted in that case? I think Raubunas, Dewes and Kaplan were no-billed. I have only learned that since I came here in this case. Cole was the witness that could gain a conviction against Kaplan. He was the only witness as I remember it who could gain a conviction against Kaplan. I remember Frett. I first learned about the no-bill as to Raubunas, Dewes and Kaplan after they were no-billed. The District Attorney's Office, at my suggestion, quit giving us the no-bills and the true bills during the month. I would learn about the true bills and the no-bills during the month because I had the indictments, during the month the Grand Jury was still in session.

Q. You learned that the grand jury returned a no-bill as to Kaplan, Dewes and Raubunas shortly thereafter?

A. I think one of the grand juries that I presented it to a couple of times—

Q. That grand jury did?

A. Which grand jury?

Q. The one Mr. Coates was foreman of voted a no-bill, didn't it?

A. Yes, he said it did.

I don't think I did from that date until the time I left the office ever re-present that matter to the grand jury. That is possible in a case where one jury returns a no-bill, I have the right to present it to a succeeding grand jury, if I see fit, and that grand jury to return an indictment. I don't think it is right, but it is possible. I don't think it is right unless you gain new evidence. I don't ever remember seeing Raubunas. I prosecuted him. He was in court here, I suppose. The first time in my life I ever saw Eddie Dewes was after I indicted him, I suppose. I think I indicted him in the Beisner farm case. The first time in my life I ever saw Kaplan was when I got myself indicted and I came up to make bond. When I got myself indicted in this case, September 29, 1939. I never saw him before that. I knew what business he was in from what the agents told me. I did not know where his principal place of business was. I know every time they knocked off a still they told me it was Kaplan's. I 1332 have a recollection of seeing Francis Campbell testify in the Western Avenue still. He was the agent. He furnished me with the case report in that case that I thought was a good one, too. I don't remember what was the disposition of that case. I think I presented it to the grand jury. There was not a true bill voted, I think that they were all thrown out, by the grand jury. They voted a no-bill. I thought it was a good case or I would not have presented it. I don't think I ever re-presented that case. From the time it was no-billed until the time I left, I never re-presented it.

Q. There is a delicatessen store at the corner of Kedzie and Douglas Boulevard, what corner is that?

A. I was out there to take pictures, so I can tell you.

I was never out to the delicatessen store before I took pictures. I am positive of that. That is right out there in the west side. Kretske lives at 12th and Newberry, 12th and Halsted, you might say; it is one mile to Ashland; two miles to Western; three miles to Kedzie; it is about three and a half or four miles from Norton I. Kretske's home.

Q. You remember Mr. Lou Kaplan's automobile agency?

A. From where I heard it in this court room, it was—Kretske's home or the delicatessen store?

Q. How far from Lou Kaplan's automobile agency was the delicatessen store?

A. I understand Kaplan's place of business was at Kedzie and Ogden. This is Kedzie and Douglas. It is probably a half mile or a mile.

I never saw Kaplan in his place of business. I never did purchase an automobile through him. I never did have financial transactions of any kind with Kaplan. I never met him until I was indicted here. I have not met since either. I was told that he was in the business of making alcohol. I don't remember when I first saw Kaplan's name in a case report charging with a violation of those laws.

I saw it in the Western Avenue still case report. I 1333 do not know that he was convicted in Milwaukee. How would I know? I did not know the assistant United States Attorney in charge of that prosecution of that case in Milwaukee.

Q. Did you ever hear of him?

A. What is his name?

Q. Keller.

A. Sure. You said I talked to him when I was in Milwaukee.

I talked to some assistant, I don't know which one. I don't remember if it was Keller. I talked to one of the assistants. My idea was that it was somebody by the name of Koelser.

Q. Koelzer is the man in the office now, is that correct?

A. I don't know him.

I don't know if Keller is the man that used to be in the office. I thought it was Koelser that I saw in Milwaukee.

The Court: Q. There was a Koelser and Keller, is that right?

A. I don't remember which one I saw, Judge.

Mr. McGreal: Q. Did you ever have any discussion with Keller in Milwaukee about the case of Lou Kaplan?

A. Did I have discussion with him about which case of Lou Kaplan?

Q. The one in which he was indicted.

A. In Milwaukee?

Q. Yes.

A. I don't remember such conversation.

Q. You don't recall such conversation.

A. There certainly wasn't anything crooked about it if I did.

I wouldn't say I didn't have any conversation with him. I didn't talk to him about fixing Lou Kaplan's case.

Q. Do you recollect calling at the office of Assistant United States Attorney—

A. I don't remember such conversation.

Q. You don't remember such a case.

A. I don't remember that Kaplan was convicted in Milwaukee.

1334 I thought it was Koelser that I talked to about Kausanback. It may have been Keller. I don't know if I ever met Keller in this building. I don't think I ever saw him in this building, I may have. I don't remember Keller. Keller—if I would see him I would know. I can't answer when was the first time I ever saw Lou Kaplan's name in a case report. The first time I saw—the first time I knew that Lou Kaplan was a boot-legger, an agent told me he was a boot-legger. I don't know who the agent was who told me that he was a boot-legger, but I think Frank Campbell. There was no arrest in the Western Avenue still case. There was a seizure of the still at 2524 South Western Avenue, but there was no arrest. No, I don't have a distinct recollection but I know in the Western Avenue case it was a cold still; it was tipped off and that is the reason they got out cold and no prisoners were arrested. I mean it ceased operating. And by being tipped off, somebody had warned them before hand, before the seizure was made. That was my contention anyway. I know it was tipped off. I don't know it was tipped off. I just contended it was tipped off. I distinctly recall the case now.

Q. Did the case report identify it, or the case report implicate Lou Kaplan?

A. If you will let me see the report. I don't remember.

Q. Don't you recall?

A. I don't have recollection of what defendants were in a particular case. I know Kaplan was supposed to be in the Western Avenue case.

I do not have difficulty remembering the facts in all the cases I try. That was the one where they got Hodorowicz, if it wasn't for me they would never have gotten him. I got Kanzenback and that is how I tried to get Nick Aboskicis. I can remember some. I remember the Western Avenue still. I don't know when was the seizure, certainly I wouldn't know who in the case report was named as persons that could implicate Louis Kaplan, unless

1335 you showed me the report. I haven't seen it for a couple of years. I do not remember a man by the name of Adam Widges in Western Avenue.

Q. Do you remember the name of Davis?

A. Who?

Q. Davis?

A. Where?

Q. In the case report.

A. I don't have any recollection of the case report at all.

Q. Did the case report show how much coal had been bought. Did the case report show much coal had been purchased?

A. Yes, I remember something about that coal.

I do remember who purchased the coal. Some witness did identify Lou Kaplan as the person that bought the coal. I brought those witnesses before the grand jury. They did testify. That is right. Lou Kaplan was no-billed, as he should have been. I say he should have been. I concurred in the action of the grand jury. That is correct. I don't remember the Spring Grove case. If you will let me see the reports I can tell you. I certainly don't remember if Kaplan, Raubunas and Dewes were presented to the grand jury on the same day. I appeared before a grand jury every month. I suppose I did appear before the grand jury in October, 1937, in this building. I was before every one of them. I remember John Jersek, but I don't remember it being presented to the grand jury. I don't remember if there was a no-bill in that case.

Q. Was it passed to the next grand jury, by your request?

A. If it was no-billed, why would it be? I would have to see that.

The Court: We will take a recess. You may let him look at those files.

The Witness: Yes, then I will be able to testify.

I did talk to somebody during the recess. I talked to

Mr. Stewart, Mr. Callaghan and a couple of dozen 1336 others. I know what document marked number 113

is. It is a report of the Alcohol Tax Unit in connection with the Spring Grove case. I think I did see it before. I did see it before the meeting of the grand jury in May of 1938. That is the usual form of report of the special investigator. I had it in my possession when I was before the grand jury. That is right. I read it many times at that time.

Q. Now, on page 52, directing your attention to that page, would you mind stating what that says, beginning here, indicating for the purpose of the record, about half way down the page?

A. Shall I read it?

Q. Call out these names on the first line. What does that say?

A. That says Louis Kaplan.

Q. What next?

A. Is implicated by the testimony of—

Q. Read these names.

A. Peter Frett.

Q. The next one?

A. Don't you want me to read why he is implicated by that testimony?

Q. The next one.

A. Elmer Helzinger, Sylvester Urbanski, Joseph F. Cole.

Q. Any more?

A. Joseph F. Cole if used as a Government witness—

Q. Any more?

A. B. E. Campbell.

I do not remember reading that page before. I don't know if any of those witnesses were before the grand jury. You see, you have the advantage of me because you have it in front of you and I have to guess, from memory.

Q. I don't want any advantage of you. If you want any report, you ask me and I will give it to you.

1337 A. I would like to have that report and have the advantage of it so I can read it and then you ask me the questions.

Those appear on page 52. You read it last night. It is still fresh to you. I don't remember if I had those names mentioned there, witnesses before the grand jury. This report would not show that I had those witnesses before the grand jury.

Q. I meant the grand jury record.

A. I was looking at something.

I did not take care of subpoenaing witnesses before the various grand juries. The agent and Miss McGarry took care of that. I was too busy. I was too busy to do that.

Q. Before the May 1938 grand jury, do you recall that was the time that Cole was a witness; do you recall what other witness appeared that day.

A. No.

I have no independent recollection at all of that. I don't remember if there was some one else besides Cole.

Q. I show you a document marked number 95, I think it has been previously identified as the minutes of the

grand jury of the month of May, 1938, and directing your attention to document number 40 appearing on that page, do you see the names of the witnesses that appear there?

A. Yes, sir.

It also shows the disposition of the case. It shows the case number of a certain indictment D. C. 30992. I don't know against whom the indictment was returned but a true bill was voted, according to this record, on May 17, 1938, against Stanley Slessor, Joe Cole, L. Pregenzer, that is Lincoln Rankin and Ralph Bogush. No-bill voted in that case. The truebill vote was 20 votes and the no-bill against Kaplan, Raubunas and Dewes on the same day were 22 votes. I don't know what witnesses appeared before the grand jury, but according to this record—do you want me to read their names? R. E. Ensler, Grace Hollinger, H. D. C. Bannister, S. R. White, A. Smelzer, Steel Sins, E. Simonson, W. Blackman, J. Fernandez, L. 1338 Berganzier and Joe Cole.

Q. That would be the time they had Joe Cole to appear before the grand jury?

A. That is one of the times.

I don't know if that would be the last time. It was one of the times. I got an immunity waiver signed by Cole. I got an immunity waiver signed by Pregenzer.

Q. The grand jury indicted the men you have named, but they returned a no-bill as to the other three?

A. Beg your pardon. I made a mistake. You asked me if I got an immunity waiver from Pregenzer, I did not.

I did not get one from Pregenzer and I might say now that if it had not been for the fact that the record here showed it, I would not remember it, and I don't have any independent recollection of the immunity waiver against Joe Cole, but I know everybody named as a witness in the report.

Q. Isn't it true you got an immunity waiver from Pregenzer, but you didn't get one from Cole?

A. The testimony was here that he refused to sign one.

That was the testimony here. You see, you said I handled a thousand cases. There were probably five or six thousand defendants, and I went before the grand jury with probably eight or nine thousand defendants. I can't remember. I remember the Workman case. I wrote certain letters in the Workman case.

Q. That was the case where thirty-two defendants were indicted.

A. Yes, sir.

One or two witnesses appeared before that grand jury. I was in the office two or three months and I thought all you had to do was go in there and anybody can tell a story and everybody gets indicted.

Q. With the one witness, agent Frank White, the grand jury returned indictment against thirty-two individuals and corporations; is that correct?

1339 A. I don't know. Whatever the record shows.

Q. Case 29092?

A. Yes, and I got a telegram from the Secretary of the Treasury and a letter from every one else telling me how wonderful it was.

Q. I show you a series of letters, Government exhibit 3; directing your attention to Government exhibit 3-B, did you cause that letter to be written.

A. It bears my initials, that is the only way I know.

The letter was written to the Attorney General. It requested permission to dismiss out of the indictment the defendants Nieman Brothers and Louis Nieman.

Q. Will you read the second paragraph of that letter?

A. "I have had an investigator of the Alcohol Tax Unit working with me for the past couple of weeks * * * and have faith in the company and individuals and they have promised to testify for the government."

I don't know if I got an answer to that letter. Government's exhibit 3-C bears my initials. I suppose I dictated it. It was written to the attorney general. It says: "I have the honor to request permission to dismiss out of the above entitled indictment the defendants Chicago Steel Tank Company and R. Shurick."

Q. Read the second paragraph?

A. "I have had an investigator of the Alcohol Tax Unit working with me for the past couple of weeks and have interviewed the above named company and individuals and they have promised to testify for the government."

I don't know if I got an answer to that letter. Government exhibit also marked "3" was written to the attorney general. The defendants mentioned in there were Fletcher-Eikman & Company and L. M. Fletcher. I had the same paragraph about testifying for the Government in there.

Q. Directing your attention to Government exhibit

1340 3-f, did you write that letter or cause it to be written?

A. This was for the Attorney General.

Q. What is that?

A. This is signed by the Attorney General. That was the letter addressed to the Attorney General.

I wrote exhibit 3-G. That letter bears my signature. That is written on the stationery of the Department of Justice, Washington, D. C. That is not the stationery I used in the District Attorney's office of this district. That letter was written in Washington. That is correct. I don't think I dictated it in Washington, but I signed it. It bears the date of October 31st, 1935.

Q. Will you read the letter?

A. *In re* United States vs. William J. Workman, *et al.*, D. C. 29092. "I have the honor to request permission to dismiss out of the above entitled case the following named defendants. George A. Mathews, A. J. Engelhardt, James P. Harrington, B. J. Burns, J. Canton, P. F. Ramsey, J. B. McWilliams, H. P. Swanson, Tony and Frank for the reason that none of the above named defendants have been apprehended nor have we the addresses of any of them." "I should further like to ask for the dismissal of O. P. Klein and D. B. Skelly Syrup Company from the above entitled case for the reason that I don't think we have a sufficient amount of evidence against either of those defendants to warrant our going to trial in this case. Respectfully, Michael L. Igoe, United States Attorney for the Northern District of Illinois, By Daniel Glasser, Assistant United States Attorney."

Q. Did you write other letters, with that signature?

A. What do you mean by that?

Q. Did you write other letters with that signature in similar cases that you have typed in the letter the name of the District Attorney and then your name, Daniel D. Glasser?

A. I might have.

This letter was written when I was in Washington. I recall the circumstances surrounding the writing of 1341 that letter in Washington, I had a conversation with somebody before I wrote that letter. First I had a conversation with Judge Igoe in Chicago. I had a conversation with some assistant attorney general in Washington. I do not remember his name.

Q. You then sat down in Washington and wrote this letter and asked permission to dismiss these defendants?

A. I see one there by Judge Igoe.

I did this in Washington, but I thought you wanted me to explain it. When I went to Washington I did not have a letter signed by the United States District Attorney. I did not have any letter signed by the United States District Attorney when I left for Washington.

Q. When you got to Washington you wrote this letter on the stationery of the Department of Justice, Washington, and signed your name to it as an Assistant District Attorney, is that correct?

A. I did not do that at all. He did that.

The fellow I was with did that I remember distinctly.

Q. Isn't this your signature appearing on Government exhibit 3-G?

A. You don't let me finish answering your last question.

Q. Isn't that your signature that you just look at?

A. I will be glad to answer any question.

Q. Answer the question: isn't that your signature?

A. Which one?

Q. Government exhibit 3-G, you just looked at, you read that?

A. My signature, yes, sir.

Q. And now in that case there were thirty-two defendants originally?

A. If you say it— I don't remember the number.

Q. The grand jury of the June, 1935 session returned true bill in case number 29092 naming thirty-two individual defendants, some of which were corporations, isn't that correct?

A. The last part I know is correct, but the number I don't remember.

1342 I was the Assistant District Attorney in charge of the case. I appeared before a grand jury which indicted. I knew what proof I had against these defendants at that time. If I were to tell you frankly and honestly, I would say I didn't know.

Q. If you went before the grand jury with an agent, you know then what evidence you had in your possession, didn't you?

A. I didn't even know what evidence was, then.

Q. Weren't you a lawyer?

A. That is a question.

I was an assistant United States District Attorney, I was an attorney, but— I don't think I did know what evidence was. I didn't learn what evidence was until after I went in this office, after some time.

Q. You knew what evidence was in the possession of the government against those thirty-two individuals, didn't you?

A. I knew what the facts were, but what was legal evidence and what wasn't, I didn't know.

Q. After you caused the grand jury to return an indictment, did you believe you could get a conviction against these defendants?

A. I didn't cause them to return an indictment.

I went before the grand jury in that case. I think one of the agents submitted that matter to the grand jury. I think Agent Frank White who testified here. I don't know if I showed those pictures of 773 Cullerton Avenue still to that grand jury. That was probably my first grand jury. Government's exhibit 7 is the building at Cullerton Avenue. I don't know if that was the building where this still was seized. I don't know if I ever before saw government exhibit 31. That is just a bunch of empty or broken tanks. I don't remember if that is a picture of a lot of empty tanks found in that building, that picture is not even identified. I don't know what it is. 1343 I mean on its face, it is just a picture of a number of empty cans. I really don't remember if I ever saw that picture before.

Q. Now, I show you a number of Government's exhibits, what are these numbers on the pictures there, I believe running from about number 18 to 32 inclusive, did you ever see any of those pictures before?

Mr. Ward: Those are Exhibits 20 to 34 and 7 to 18.

Mr. McGreal: Q. Did you ever see those pictures before?

A. I can't really say, I probably had ten thousand pictures in the time I was in that office, and I didn't put my initials on any of them.

Q. At that time that was your first case?

A. That was pretty close, I was in in June, 1935.

This was a 10,000 gallon still and there was 124,000 gallons of mash and 12,000 gallons of alcohol. I say that just because you say so. I don't remember. It was you say in June, 1935, it was about sixty days after I came into office. It was my first big case.

Q. And you requested the grand jury to return a true bill against these people?

A. I don't think I even did that.

Q. Was there a man named Yarrio indicted in that case?

A. Well, since I have been in this court room I learned he was, I had forgotten about it. If you show me the records, I can remember; I don't remember, there were thousands of them.

I see the name of P. S. Ramsby on Government's Exhibit Number 3-G. I do not know who P. S. Ramsby was.

Q. Have you any idea?

A. Well, in this court room somebody said it was Yarrio, or the fellow who paid the rent, I think Workman said it was the man who paid the rent.

I wouldn't know that that was Yarrio from 1062 Polk Street, the fellow they called Sheenie Albert.

1344 Mr. Ward: His name was Schiavone, do you recall that, Mr. Glasser?

Mr. Glasser: Ramsey was Schiavone.

Mr. Ward: No, the man who paid the rent was Sabone. (Mr. McGreal continues cross-examination.)

I know a man named H. L. Welch. I only talked to Yarrio once in my life.

Q. There was a Welch named in that case as defendant?

A. You see, the things I am testifying to were somewhat refreshed in my recollection since I have been in this court room. Show me the indictments, and I will tell you.

I have had a copy of this indictment since the 29th of September, 1939. I did know the charge that was placed against me by the government.

Q. And these cases were named either in the indictment or Bill of Particulars?

A. Well, you said September 29th, we got the Bill of Particulars about the first of January.

Q. Well, you have had a little time then, to take a look at these cases?

A. I have only had a chance to think about them.

The Court: Show it to him.

The Witness: Government's Exhibit 5 is the indictment that was returned. I have seen that before. I prepared that, I believe it has my initials on. It does bear my initials. It bears my initials as being the file I dictated, and Elmer S. Wandell is the person who wrote it. There is a

man named Welch indicted in that indictment, it shows a couple of Welch's, M. L. Welch and H. L. Welch, alias John Polk, alias Yarrío, alias Sheenie Albert. I don't remember if I wrote to the Attorney General for permission to dismiss him out of the case. I don't think so. I do not recall that the record shows in April, 1936, H. L. Welch was dismissed for want of prosecution, unless I refreshed my recollection in the preparation of this case. I don't think I wrote to the Attorney General for permission to dismiss him.

Q. And the net result of the Government in that 1345 case was there were two defendants, two of them were put on probation, isn't that right?

A. Whatever the record shows I wouldn't be surprised.

I don't remember the one who testified here, and the other one was a workman around the place. I don't remember that. I did meet Yarrío. Why, he came up to my office here one time. Oh, I think he came up to my office more than once. He came up to tell me I got the wrong fellow in this case. He told me I had the wrong fellow, and I said—that was during the pendency of that Workman case. That was some time between June of 1935 and April of 1936. That was the first time I ever met Yarrío. He told me then I had the wrong man. I didn't report to the Alcohol Tax Unit.

Q. Did you report to the Attorney General that you had the wrong man named in the indictment?

A. Just because he said it was the wrong man was not the reason I believed he was the wrong man.

I didn't believe it. I still believed I had the right man. He was dismissed out of the case.

Q. And did he ever come to your office again?

A. When, before he was dismissed, or after he was dismissed?

Q. When was the second time he was at your office?

A. Well, he came again.

Q. When?

A. I don't know, this is during the pendency of the indictment.

Q. Sometime between June 1935 and April 1936?

A. First he came to tell how innocent he was, and I said to him at that time, "Before I get through with you I am going to send you to the penitentiary."

The second time he came to protest his innocence again. I said, "Well, if you are willing to take a chance you can

come up to my office." I had discussed it with Carl Hambeck, an agent who was working out of the office at my request, in trying to get this case lined up. I said, 1346 "If you are willing to take a chance, I will have the identifying witnesses come to the office." He did come to my office the third time. I didn't bring some witnesses to my office. I think the agent brought them. I think a couple of witnesses, two or three. I do not remember what their names were. I am just trying to recall when was the third time Yarrío came to my office. Oh yes, it was before he was dismissed out of the case. I didn't write to the Attorney General about dismissing him, I didn't dismiss him. That is true that he was dismissed under an order for want of prosecution.

I know Tom Bailey. I first met him sometime in 1937 or 1938. At the time I first met him he was an agent. He was investigating liquor cases. Well, that is what he told me he was doing. I did confer with him from time to time. I did not ever tell Frank Hodorowicz at any time that I was over a barrel in that case. The Alcohol Unit were. I did not ever tell Frank Hodorowicz I couldn't do anything for him this time. I never did anything for him before. I did do something for Pete, I had him held to the Grand Jury, and I indicted him—I had him presented to the Grand Jury and I think I indicted him. I don't know if the records show that, I can't remember.

Q. Well now, do you recall the preparation of that case for the still at 6949 Stony Island Avenue?

A. I don't know that still at 69—whatever it is, Stony Island; if you tell me who was in it—

Q. Swanson was a defendant. You remember that case?

A. Is that the one where Roth was in?

Q. That is the one Mr. Roth was in.

A. Yes, sir.

Mr. Ward: If Your Honor please, at this time, if Your Honor wants to adjourn at this time, Mr. Glasser does not know anything about the files, I will be very pleased to hand him any file here that he wants to look at, so he can look at it and be prepared for that examination.

1347 The Witness: I would like to make this request.

Mr. Ward: He keeps saying he does not know.

The Witness: I appreciate the offer of counsel, and I would like to take advantage of it, but I would like to take advantage of this tomorrow, rather than today, or now. I am a little tired now.

The Court: We will suspend now, until Monday morning at ten o'clock. In the meantime you may have access to those files.

Further Cross-Examination by Mr. Ward.

I did tell this court and jury when Frank Hodorowicz asked me about Mr. Hess, about how he stood with Judge Woodward. I said he stood fine.

Q. And at that time were you out to get Frank Hodorowicz, you were, weren't you?

A. Yes, sir—I wasn't out to get Frank Hodorowicz in my individual capacity—

I was vigorously prosecuting Frank Hodorowicz. I believe I testified to two conversations with Frank Hodorowicz subsequent to his indictment in my office and one the day he made his bond. Subsequent to the first indictment which was in June 1938 and I had no further conversation with him preceding that so far as I recall. If you have something in mind, if you will tell me about it. I don't remember. I was indicted in this case September 29th and in that indictment there was listed practically all of these cases we have been talking about here. I was Assistant District Attorney for four years and I have read hundreds of indictments. When I got my own indictment I read it, and I saw all of these different cases. I did not go to Mr. Morgan since I was indicted in this case and asked him if I could see a single file of any case mentioned. It is not a fact that I resigned in April of 1939. I ceased active work. It is a fact that Mr. Campbell requested my resignation.

At the time when I resigned you had been appointed 1348 Chief of the Criminal Division of the United States Attorney's Office. Long before the Workman case, long before that I was sitting around looking for a chance to do some work. When I came into the office I was sitting around and I was anxious to get started. I was looking for a career in the United States Attorney's office, and I was just anxious to get my toes in and get to work.

Q. And finally you got the District Attorney to assign you to the Alcohol Tax call?

A. No, sir.

Q. Well, finally, I said.

A. You said finally I got him to assign me, I didn't get him to assign me, he was the one assigned me.

He picked me out. I did not request the call. I would not say that I finally got the call, and that the first case that I had was the Workman case. The first large case, yes.

Q. Mr. Glasser, will you tell this Court and Jury after you had the Workman case, if you ever had a case in all the time that you prosecuted that was even half as large as the Workman case, just half as large?

A. When you say the Workman case, large in just what?

Q. The size of the still.

A. No, that was the largest still.

I don't know that there was 12,000 gallons of finished alcohol found there. I don't know that there was 212,000 gallons of mash there, I wasn't there when the seizure was made. That was the first large case that I had as a prosecutor of alcohol tax cases and that is right that I don't know how much alcohol or mash was there. That is very true. May I explain something, Judge?

Mr. Ward: Just answer the question.

The Court: You may answer.

The Witness:—I would just like to explain this, that the Workman case, they had been indicted before it was turned over to me.

1349 The Court: But you had the files?

A. Yes, sir, but they had only indicted three people, and I took it to the Grand Jury and indicted—

Mr. Ward: You were not satisfied with their indictment?

A. No, sir.

I went into the case thoroughly. I knew every angle of it at that time. That was the first large case I had as an Assistant United States Prosecutor. It does stand out in my mind.

Q. How large was the still?

A. I remember from the testimony here now—

Q. How large was the still, you said it stood out in your mind?

A. I did. I might be perfectly frank with you, I didn't know, and I didn't remember how large the distillery was.

Q. Is that mentioned in the Bill of Particulars?

A. How large the still was?

Q. No, the Workman case.

A. It was mentioned in the Bill of Particulars, yes, sir.

Q. And you had two months to find out how large the Workman still was, and you can't tell this Jury now how large it was.

A. I didn't have two months.

Q. January 1st?

A. Yes, sir.

Q. This is March 5th.

A. Oh, you mean during this month of trial I should have been studying it?

I did not over these different week-ends confer with Mr. Stewart practically every day. Mr. Stewart had a copy of the testimony in this case over the week-end but I didn't. I did not confer with him.

Q. You never talked to your lawyer about it until you got on this witness stand?

A. About what? You said about it. I don't know what you mean.

1350 Q. About the case.

A. About my case, or Workman?

Q. You know what I am talking about.

A. No, I really don't. I am just trying to answer.

Q. About your case.

A. Oh, yes, I talked to my lawyer about my case.

Q. The testimony that Mr. Stewart would have that you would look over at the week-end wouldn't be about any other case?

A. No, but he didn't show it to me.

Q. Didn't show it to you?

A. No, sir.

Q. All right. In any event you don't know?

The Witness: I know.

The Court: He says he does not. What is the use wasting any more time, he says he does not.

Mr. Ward: Now, you dismissed that case against Yarrion on April 1st, 1935, did you not?

A. I don't know, you wouldn't show me the report after the Judge ordered you to show them to me Saturday.

The Court: Show them to him now.

The Witness: If Your Honor please, I would like to show you this note. He wouldn't show me the report after you ordered him to show them to me Saturday, and I sent him this note at 10:25 A. M. on Saturday, I state, "Mr. Ward, at the suggestion of Mr. Stewart I am here about—"

Mr. Ward: Just a minute.

The Court: Just a minute. You don't have to read it.

The Witness: I have not seen the reports.

The Court: During the recess now, you look at those reports. I understood you were to check those files during the week-end.

The Witness: They wouldn't let me see them.

The Court: Why wouldn't you let him see them?

Mr. Ward: We can explain that. Mr. McGreal can explain it.

1351 Mr. McGreal: This defendant came to my office at the hour of 10:30 Saturday morning, and the man at the board telephoned me and told me he was there alone, and I suggested to him that he get his lawyer, I would talk to his lawyer in the matter, he said he would wait until 10:45, until he saw him, and I told him I wouldn't see him alone under any circumstances, and told the boy to tell him that. And told him to come back with his lawyer.

The Court: Is that true?

Mr. McGreal: Sure.

The Court: Did you get your lawyer?

The Witness: No, that note explained it all, Judge. I went alone to the District Attorney's Office. They had all their witnesses, Good God they certainly were not afraid of me, Judge.

The Court: I don't know.

The Witness: I wanted to read the reports.

The Court: They simply told you to get your lawyer, and you didn't get your lawyer, so the responsibility is not upon them. Show him the reports now.

Mr. Ward: Q. Now, there is the docket sheet. That docket sheet tells you every entry that was made in that case. That is right, isn't it? It is, isn't it?

A. It purports to show every entry, I don't know whether it does or not.

Q. Does it?

A. I don't know. I don't know whose docket this is. Is this the Government's docket?

The Court: You can't expect him to carry all of those things in his mind.

Mr. Ward: Q. On April 1st, 1936, you went before Judge Woodward, and had this case dismissed?

A. No, it does not say that at all, it says—it does not say I dismissed anything.

1352 It says April 1, 1936, cause called for trial as to Defendant Stevenson, H. L. Welch, cause dismissed for want of prosecution. And Defendant Stevenson—well, you want me to read it all, don't you? And Defendant Stevenson, H. L. Welch, discharged, and bonds cancelled, H. L. Wilkerson. I didn't dismiss it. I was present, I mean I didn't make the motion to dismiss. It was dismissed for want of prosecution.

The Court: Who made that Motion?

A. Not me.

Q. You were present in court?

A. Yes, sir, but I didn't make the Motion, Judge, you see—

Q. You mean the Order of Court?

A. Yes, sir.

Q. The Court on its own Motion?—

A. Yes.

Q. But the Court asked you if you were ready to prosecute?

A. Yes, sir.

Q. What did you say?

A. I said, Judge, we had our identifying witnesses and those who were subpoenaed to testify there said he was not the man, and they wouldn't so testify.

Q. That was the reply. It was an implied Motion on your part to dismiss. What else did you tell the Court to do?

A. Nothing. The Court did absolutely the right thing. The Court did the right thing. No question about that.

Mr. Ward continues cross-examination.

I told this Court and Jury that as Assistant United States Attorney I handled thousands of cases. I don't know how many thousands I handled in 1926. I don't know how many thousands I handled in 1935. I don't know how many thousands I handled in 1937, I didn't count them. I don't know in 1938. I say thousands because Mr. McGreal said the other day I disposed of 1,070 cases, and if I disposed of 1,070 cases there probably were 5,000 defendants.

1353 Q. And Mr. Glasser, didn't you say before Mr. McGreal stated that, did you not say, didn't you use the words you handled thousands of cases?

The Court: Yes, he did.

A. Yes, I did.

Mr. Ward: Q. Now, as a matter of fact, in all the

time you were handling the alcohol call, you didn't handle 1,000 cases a year, did you? Yes or no? If you know, if you don't know, say so.

A. I would say I know, but I think it is more than that.

Q. And from day to day you were so busy that you couldn't read these reports that were submitted to you, and that is why you were unfamiliar with the Kwiatkowski report, that is what you said?

A. I don't believe I said it that way.

I did handle some private business while I was Assistant. I was not frequently away from the office in 1937 handling private business, my call wouldn't allow me to be away frequently.

Q. What was your salary in 1936?

A. I started with \$3200.00, I don't know—

Q. What was your salary in 1937?

A. Well, I started with \$3200.00, then I was raised to \$3600.00.

I don't remember what my income was in 1937 as reported in my income tax report.

Q. Well, would it refresh your recollection if I told you this was \$5900.00 and some odd dollars?

A. That probably is right.

The difference between that and my salary was what I made in a private way.

Q. Now in handling your cases it frequently happened you would make court appearances, would you not? And have a case continued?

A. Which cases?

Q. Well, any case.

A. Well, I don't know—

1354 Q. I am just speaking of your routine.

A. In the District Court you mean? Yes, sir.

When I was Assistant District Attorney I would appear in court, and sometimes the cases would be continued and I would come back to my office. That is true, but sometimes men would plead guilty, and it would take a few minutes to dispose of it and I would come back to my office. I do not know how many court appearances I made in 1936. I know I only appeared in court January 1936, ten times, I took my vacation in January 1936. I went to Florida on my vacation. I went to Florida on my vacation in 1937 and in 1938.

Q. Well, after you got back from Florida, do you recall now while you were away on your vacation, or previous

to your going away that you arranged for no one to take care of your call?

A. I just said—

Q. As a rule, you would put your cases over far enough so no other Assistant would be required to take care of your call, wouldn't you?

A. I would try to.

Q. Well, you did, didn't you?

A. To the best of my ability I couldn't stop the Alcohol Tax Unit from making seizures.

Q. I say you would put over your cases.

A. My District Court cases, yes, sir.

In 1939, sometime in the summer, I think it was August, it may have been July, I received a letter from you, telling me to come to the District Attorney's Office. I had not requested previous to that letter a privilege of coming over to the District Attorney's Office at the conclusion of this investigation.

Q. Did you come to the District Attorney's Office that day because you had previously solicited the District Attorney for the privilege of coming, or did you come because I sent for you?

A. Which day are you talking about?

1355 Q. At the time you said you came to the office, and you were there at four o'clock, Mr. Campbell and Mr. Ward was present, and there was some discussion about reports, that is the only time you were there, isn't it?

A. No, I had been there lots of times.

Q. Well, that is the time I am speaking of, do you recall it?

A. I recall it.

Q. All right.

A. I didn't understand the question. You said was that the result of my solicitation that I was there?

The Court: Did you request to come there or were you requested?

A. I was requested to come there.

I came there, and that was about four o'clock, and I visited the office, Mr. Campbell's office, the front part of the office, and we had a great number of files there. I don't remember the Kwiatkowski case. I don't know if you talked to me about the Vitala case. You talked to me about the Hodorowicz case. You did not talk to me about the Albina Zarrattini case, I don't remember.

Q. What makes you remember so well I didn't talk to you about the Zarrattini case?

A. I can't say what makes me remember that I don't remember.

Q. What makes you remember I didn't talk to you about it?

A. I don't remember the name, it is a peculiar name, and I would remember it.

Q. You indicted Albina Zarrattini, didn't you?

A. I never indicted anybody—

The Court: Why split hairs on it? You present it.

The Witness: I presented it to the Grand Jury? I don't remember the Albina Zarrattini case, I don't think it was in the Bill of Particulars.

Mr. Ward: It was a woman?

A. I don't know.

1356 I have no recollection. No more than I have of Pete Kwiatkowski. I did not try to find out who Albina Zarrattini since I heard the prosecutor in this case ask Mr. Brantman on the stand if Albina Zarrattini ever visited his office and heard him say who she was. I made no effort at all.

Q. Now you told the Attorney General by letter, in the Workman case that you wanted to dismiss certain defendants from that case, and the reason for it was that they were going to assist you in convicting other defendants, that is right, isn't it?

A. That is what I saw in that letter the other day.

Q. Will you answer the question?

A. That is right.

I had gone through the files of the Workman case. I don't think I called in all the defendants in that I was going to use against the other defendants. You see, I had an agent there—

Q. Did you talk to them to find out whether you would give the evidence against the other defendants—

A. I don't know, you see, I had an agent in my office working on it.

Q. I am asking you.

A. I would say not.

I don't think I did personally take any statements from any one of these defendants that I hoped to use in the trial of the other defendants. No one did in my presence. I was making the statement to the Attorney General, and

I thought at that time everything was on the square, and the agents when they told me something they meant it.

Mr. Ward: I move that answer be stricken as not responsive, what he thought at that time, Your Honor.

The Court: It may be stricken. Let me ask you this question.

Q. Did you ask any of those agents to get a statement from any of those defendants for you to use in the prosecution of those defendants?

A. Can I just explain about that, Judge?

The Court: Just answer the question.

A. No, I don't think I did. I didn't know enough at that time—

1357 Q. Did you ask them?

A. I didn't know enough, I was only in the office three months.

Q. You earned \$3200.00 a year?

A. But not as the agent—

Q. You were making the investigation?

A. Yes, I thought I was doing all right. My record was the best in the country. But you see, I had this agent assigned to me, and he was the one to go out—

Q. For the purpose of getting the statement?

A. Yes, sir.

Q. Did you ask him to get a statement?

A. I asked him to go out and help me to prepare the case for trial.

Cross-Examination by Mr. Ward (Continued).

I came into the District Attorney's Office in 1935, March 13, 1935, that was March, the third month. I did tell this Jury I collected thousands of dollars for the government that was hard to collect before I got the Alcohol Tax Call and I did that in handling cases and writing letters.

Q. You got to know something about evidence, did you not?

A. I must have just written letters.

Q. Didn't you know anything about evidence when you wrote these letters to the Attorney General?

A. Which letters? Now, you won't let me explain those things.

Q. Did you?

A. Yes, sir, I think I knew something about evidence. But you won't let me explain it.

Mr. Ward: I will ask the questions.

A. Well, I will ask them if you will answer them.

Q. All right. I will ask the questions. Now, did you know at that time, or did you have in mind at that time that it would be as a vigorous prosecutor seeking to get the persons behind the largest still you ever heard 1358 of—did it occur to you it would be a good thing not to dismiss the defendants until they had actually appeared in court and testified against these other defendants?

A. No, it didn't.

Q. In other words, you were just taking a statement from some—I think I heard the expression, reputable lawyer, of some large law firm that came in here and gave you a sweet promise that the client would do something, and you took his word for it, is that it?

A. Yes, sir.

Q. And walked in and dismissed the case, and it finally ended up with no defendants at all, just the end—

A. That is wrong.

I think that all we had was Workman and Young. I said I attended Loyola University. I don't think I ever told anyone that I attended Loyola University for three years. I don't remember that I ever told anyone that I got a Doctor of Law Degree, I may have, I don't remember. This is my signature (indicating).

Q. And this is Loyola University, 1922 to 1925, main subject law—D.L.L. 1925—

A. That is wrong. Who wrote that? I don't know. I signed it.

The Court: May I see that?

A. Yes, sir, I would like to see it, too. I don't know what it is.

Mr. Ward: You don't even know what it is?

A. No, I don't.

Q. You signed it, and that was after you were Assistant?

A. Oh, Miss McGarry gave it to me, and I signed it.

The Court: Where did she get the information?

A. It says L.L.D. there.

The Court: This is a personnel record.

A. Mr. Campbell came into the office and asked for the personnel. It says L.L.D. I don't think there is such a degree.

The Court: Let me find out. What education have you had to prepare yourself for the admission to the Bar?

1359 A. I went to DePaul.

Q. How long did you go to DePaul University?

A. I went there, I think about a year or so.

Q. One year. Are you a graduate of high school?
What high school did you graduate from?

A. I went to Lane High School.

Q. Did you graduate from high school?

A. No, I didn't graduate.

Q. How far did you go?

A. Well, I got my credits, you know.

Q. Then you went to DePaul for one year?

A. Yes, sir, then I went to Loyola.

Q. For how long?

A. About a year.

Q. And when you were at DePaul what did you study?

A. Law.

Q. And Loyola?

A. Law.

Q. And where else have you studied?

A. I have studied previously in a law office.

Q. In whose law office?

A. I can't think of his name right now.

Q. How long did you study in his office?

A. Oh, I studied in his office—

Mr. Ward: I can't hear you.

A. I studied for a couple of years in his office, I can't think of his name, it does not come to me.

The Court: What were the requirements at the time before you took the Bar examination?

A. I think three years you could have either law school, or study with a lawyer. I had the necessary qualifications.

1360 Q. You took the Bar examination?

A. Yes, sir.

Q. Well, how long did you study in the law office?

A. Oh, I think I studied about two years, I don't remember.

Q. In whose law office did you study?

A. I can't think of the lawyer's name—it will come to me in a little bit. I have it at the tip of my tongue.

Q. Where was the office?

A. I think 69 West Washington Street.

Q. Miss McGarry was your secretary?

A. Yes, sir.

Q. And she made up this personnel record of Daniel D. Glasser?

A. Yes, sir. I didn't look at it at the time at all. I can tell you if there are any other mistakes, I doubt it. It says L.L.D. there—

Q. What do you suppose L.L.D. means, what is that?

A. There isn't any L.L.D., I think there is a J.D. or L.L.D.

The Court: It appears from this record he attended Loyola University from 1922 to 1925. Was that true?

A. No, sir.

Q. Did you give that information?

A. No, I didn't give it to her. I don't remember how that came out. Mr. Campbell knew I went to DePaul.

Q. It don't make any difference, you signed this?

A. Yes, sir, I gave it to Mr. Campbell. He knew the truth about it.

Q. I mean you read it before you signed it?

A. I didn't. It was not true. It was not under oath or anything.

Q. It don't make any difference whether under oath. You read it before you signed it, didn't you?

A. I don't remember. I really don't. And Mr. Campbell knew the truth.

Mr. Ward: I don't care what Mr. Campbell knew, I am talking to you about this document. You know, as a 1361 matter of fact, this is a personnel record for the United States Government, that the United States Government keeps on file, so it will know just who its employees are?

A. There is an original personnel record, have you got that one? This was dated a month before I resigned.

Mr. Ward: I am asking about this one.

A. I don't know what that is.

Mr. Ward: We will get to the other one.

Will you mark this Exhibit 209?

(Document so marked.)

Mr. Ward: Did you ever tell anyone that Roth was the kind of a fellow that you would have to watch very carefully?

A. Well, I told you how I felt about Roth the other day. I don't remember.

Q. Yes, or not. Did you?

A. I don't remember. I may have said it, I don't remember.

I remember the policeman that Mr. Armstrong brought over to my house that night had \$3500.00 in his pocket which I told the jury I didn't take, I remember that very well. That was the case I made myself. I had not seen the file. I remember that though, because the Alcohol Tax Unit didn't make that seizure. I remember testifying before the Grand Jury about September.

Q. And you remember telling this before that Grand Jury, "I made the statement that Henry Balaban, the lawyer in, this case, representing Mr. Horton, was a con man."

A. Yes, sir, I think you said he was a sort of con man.

Q. You think I said that?

A. Yes, sir.

I consider that a serious accusation, for somebody to call a reputable lawyer a con man.

Q. Was this question asked you, and did you make this answer: "Do you know a lawyer, Henry Balaban, 1362 his name was mentioned in this hearing." "A. Yes."

Q. Do you remember that?

A. Yes, sir.

Q. "How long have you known Balaban?" "A. Well, I have known Balaban for many years."

Q. Do you remember making that answer?

A. Yes.

Q. "I might say we are talking—I might say that there has not been anything said here about Balaban here before this Jury that would affect his integrity, I just want you to tell the Court if you know him." Do you remember that statement, yes or no? And do you remember the answer: "A. Yes, I know him." And do you remember this question: "Q. Has he tried many cases here with you?" "A. Well, I would say he tried cases. I wouldn't say tried many cases. He had a number of cases." Do you remember that?

A. Yes. You haven't finished, have you?

Q. Well, what else did I say?

A. You said, "How do you know Henry Balaban?"

Q. Yes.

A. I said because I went to law school with him.

Q. Yes.

A. He was a senior in DePaul when I was a Freshman.

Q. Yes.

A. And I said he was a good speaker and we later—

Q. And you further said—

A. You won't let me finish.

Q. And you further said that Henry Balaban to you was a hero?

A. Something like that.

Q. And you said he was quite an orator in his class?

A. You have got it there.

Q. Did you?

A. Yes. You wouldn't let me finish. And what did you say then?

1363 Q. I will show you what I said.

A. All right.

I may have said to someone that Roth was the kind of a fellow that I had to watch carefully. I may have said to the Grand Jury that Roth was getting too many cases over in my office.

Q. Did you tell the Grand Jury—

A. He had too many for me.

Q. Wait a minute, now. Did you tell the Grand Jury that he ought to move his desk over into your office?

A. I told him that.

Q. Did you tell the Grand Jury is what I asked you.

A. I told the Grand Jury that I told Roth that?

Q. Yes.

A. Yes. I did tell it to him.

Q. Was this question asked you and did you make this answer: "Q. What kind of a fellow is Roth?" "A. I don't know what kind of a fellow Roth is, except to say that I have a theory upon which I worked when I was in the United States Attorney's Office. My theory was that if any lawyer were to handle so many cases, that it was not a good idea. All one particular kind of cases. I watched him always very carefully and closely. He had suddenly, for no good reason that I could find, picked up a lot of very good cases, and in the first couple of years, I don't think he had more than one or two. He didn't have very many, if any, and then suddenly he began to get a lot of good cases." Did you say that? Yes or no?

A. Yes, sir.

Q. "Q. When did he start getting a lot of good cases?" "A. Well, I would say maybe within about twelve or fifteen months before I left the office." Did you say that?

A. I probably did.

Q. Did you, yes or no?

A. Well, yes.

1364 Q. "Q. Did you notice any increase in his business after Kretske left the office?" "A. No. Kretske left the office a couple of years before." Do you remember that?

A. Yes.

Q. "Q. He left the office in 1937, didn't he? April, 1937? Did his business increase after that?" "A. Yes. I would say that he had much more business within the period of time after Kretske left." Did you say that?

A. Yes.

Q. Yes. "Q. Did his business increase to such an extent that you were rather surprised at it?" "A. His business did increase to a surprising extent. I thought to myself I am going to do all in my power to see that nothing I do will cause him to get any more business." Do you remember that?

A. Yes.

Q. "Q. Did you think that someone was getting these cases for him?" "A. No. I just had the thought that I just felt that I didn't like Roth." Did you make that answer?

A. Yes, sir. Yes, sir.

Q. "Q. When Roth had handled these few cases you spoke of before the increase in his business, had he established any reputation for being successful in his defense as a defense lawyer, in this building?" "A. I may not honestly say that he was very successful in the handling of any cases before, say fifteen months. It started, say, in January, 1938." Do you remember that?

A. Yes, sir.

Q. "Q. Did you carry any thought in your mind when his business increased that it was perhaps due to the fact that he was very successful in defending men in this building?" "A. He was not successful with me. That I remember." Do you remember that answer?

A. Yes, sir.

1365 Q. "Q. I mean, before his business increased."

"A. Yes. He had a fairly good reputation, particularly in narcotic cases, as I recall." Do you remember that?

A. Yes, sir.

Oh, I absolutely made all those answers.

Q. And did you answer—"Q. Did he handle any nar-

cotic cases?" "A. Well, I don't know. I did see him in the courthouse daily when he started to get a good many cases. He may have had between fifteen and twenty cases." Do you remember that?

A. Yes, sir. I answered it.

Q. And did you say: "Q. Did you ever handle any narcotic cases?" "A. Yes." "Q. How often?" "A. I handled all the narcotic cases when Miss Bailey was ill in 1938. I think that was about eight weeks." Do you remember that answer?

A. Yes, sir.

Q. "Q. What kind of a man is Roth? Tell the Jury what kind of a lawyer Roth is." "A. Roth is an excellent lawyer." Did you make that answer?

A. I guess I did.

Q. "Q. Did he fight his cases in court?" "A. Oh, yes." Do you remember that? "Q. Did you and Roth have any battles in Court?" "A. We always fought. He always got in my hair. I always like to have a lawyer who would fight, but this fellow was in a sense ridiculous." Did you tell the Grand Jury that?

A. Probably did.

Q. "Q. Do you mean that he tried to get your goat while he was in Court?" "A. Yes." "Q. In what way?" "A. Oh, I don't know, except he would say sarcastic remarks and make the kind of cracks that I wasn't used to in Court." Do you remember that?

A. Yes.

Q. "Q. At times, he would get you sort of angry and you would have an exchange of a lot of courtesies in Court?"

A. I remember that; yes.

1366 Q. "Q. And then your heat would die out and your relations would resume normal proportions again? A. Well, the normal proportions was nothing very much. He used to come to my office. I told him at one time he ought to bring his desk over there so he could be right close to me." Did you say that?

A. Yes.

Q. "Q. Why did you say that? A. Because I was getting tired of his coming down. Q. Was there anything wrong about his coming down? A. Nothing. It was just one of those things, I think, and that always rubbed me the wrong way." Did you make those answers?

A. Yes, sir.

Q. "Q. Did you find out that he was getting, that he was getting business in a manner that was not legal? A. No. I know nothing about such things like that." Did you make that answer?

A. Yes.

Q. "Q. You were in a frame of mind you would rather be trying cases against somebody else rather than Roth?

A. I didn't care to try them against Roth because Roth—I don't believe that he beat me in a case, no. Our relations was only in Court. You see, I just didn't like him. I didn't want to have any personal relations with the fellow. It was hard to explain. It is just one of those things." Did you say that?

A. Yes, sir.

Q. Now, did you ever tell anyone that Kretske associated with all the bums and hoodlums in Chicago?

A. I don't think I said it just that way, but I probably said something about him associating—

Q. You had something to say about Kretske?

A. Yes. You asked me. I had to answer.

Q. And you told the Grand Jury that Kretske associated with every bum and hoodlum in Chicago?

A. I don't think I said every one. Did I?

1367 Q. In other words, you were selling yourself to the grand jury—

A. No. I wasn't.

Q. --at the expense of Mr. Kretske and Mr. Roth?

A. No. You were selling me out.

You were asking me questions and I made those answers. And you told me, "I don't want you to think I am interrogating you, Dan." Those are questions and answers.

Q. Now, after you told the Grand Jury all about Mr. Roth you then told him, a lawyer on the outside, practicing, handling cases against the Government, you told him about Tom Bailey, a man employed in the Government service, did you not?

A. Yes, sir.

Q. Now the Vitale case—the Vitale case, the defendant was indicted almost three years after the offense was committed, the first offense, was he not?

A. Yes, sir.

Q. And in the meantime before you indicted him on this case did you have that case you have in your hand, there was another case developed against Vitale, was there not?

A. Well, I was just taking it out to look over this file a moment to see if I might know something about it.

Q. Well, I will refresh your recollection. For your convenience, Mr. Glasser, these files are marked 1, 2, 3,—that is the offenses occurring, Number 2 occurring before Number 3.

A. Yes. Well, now, this Number 1 case is the case where he was shot on the farm.

Q. All right. Now, let me ask you this, the case where you told Judge Wilkerson that Vitale just happened to be down there making arrangements with Mr. Meyer to purchase some pickles, was it not?

A. No, I said that is what Vitale said.

Q. I am asking you what you said to Judge Wilkerson.

A. This man—I am telling you I told Judge Wilkerson.

1368 Q. Regardless of who told you, in the presence of Judge Wilkerson right at the Bar here in this courtroom, did you tell Judge Wilkerson that Vitale—when he asked you to tell him about the facts in the case, that Vitale just happened to be down there on the Meyer farm, making arrangements to purchase pickles, and there was a raid that occurred just at that time. Then after that the Judge said, well, he gave him an hour in the custody of the Marshal, is that right?

A. That is right. Which part are you asking me, the latter part or first part?

Q. Let us take the first part, we will discuss it. What did you say to Judge Wilkerson that day?

A. Well, I remember it, I said to Judge Wilkerson, I told him that he had been shot at the time of the seizure, and having been convicted of this offense in the State Court, and I said he said he was down there to buy pickles. Well, every time we got somebody from the farm, they were buying pickles, or picking mushrooms or buying eggs, or something else.

The Court: Did you say that to the Judge?

A. Yes, sir.

Q. That was your statement?

A. Yes, sir.

(Mr. Ward continues cross-examination.)

I guess I did have that report in my possession.

Q. Did you use that report? Vitale pleaded guilty to the charge, did he not, and admitted every allegation you charged him with in that indictment, that is true, isn't it?

A. Yes. Judge, I would just like to do this. You see—
Mr. Ward: Just a minute.

The Witness: I would just like to say one thing.

The Court: What do you want to say?

A. I just want to say this is a report in the Vitale case, and Mr. Ward is trying to make—

Mr. Ward: I object to any remarks.

1369 The Witness: Well, I won't say it.

The Court: This is a report you had in your possession?

A. Yes, sir, and these are the facts—this down here is what they call a chronological history of the case. That is all I would have from the Alcohol Tax Agent, and that report was made a year after the raid.

The Court: I don't care about that. You had this report in your possession?

A. Yes, sir, that will show, Judge, what the situation is.

Mr. Ward: Now, look at this report—part of the Vitale files for the purpose of the record, it has a small two up in the left-hand corner, look at that report. Look at it now, look it over.

A. Well, I see in my handwriting it has a notation here.

It says two—2/24/39, under sentence for year and day, should be No Billed, under this sentence, not very strong. That was told to me by Dowd. Mr. Dowd told me, I state Mr. Dowd advised me.

Q. Just look at the file again. I want to ask you if you had that file in your possession before you returned the indictment in the Vitale case?

A. Well, when was the indictment returned?

Q. The indictment was returned April 26, 1938.

A. Yes.

I did not indict him on that offense. I did not tell Judge Wilkerson about that offense. I don't think I am allowed to tell him about those offenses.

Q. I am not asking what you are allowed to do. The Judge asked you the question to tell about this defendant.

A. Yes, sir, he asked me to read him the report, and I did.

Q. Regardless of whether you are in the habit of doing it, the Judge asked you?

A. No, no. The Judge didn't ask me to tell him about cases where the fellow has not been convicted.

I was anxious to tell Judge Wilkerson the type of 1370 fellow Vitale was and I did. Dowd suggested I recommend an hour in the custody of the Marshal. He did suggest that. It is not a fact that Mr. Dowd was not before the Court at any time in that case.

Q. Don't you know, as a matter of fact, Mr. Dowd was not even the agent, the agent was Barney Cloonan, and you never notified him to be here in court?

Mr. Stewart: That is three questions.

The Witness: That is three questions in one.

Mr. Ward: Q. Do you know whether Barney Cloonan was the agent?

A. He wrote that report?

Q. I want to know whether Barney Cloonan was the agent that would be there on that date when it was disposed of before Judge Wilkerson?

A. I would say probably not.

Q. And did you notify any agent to be present at that time?

Q. Can I tell the story why I didn't?

Q. I am asking the question. Mr. Stewart can redirect if he wants.

A. All right, you just ask half the questions.

Q. What was the question? (Question read.)

The Witness: A. No. So far as I remember, no.

Q. Now, this case, the second number, 2, that you have there, that you didn't indict on, do you know the facts of that case?

A. I probably did at the time.

Q. And now there was another case developed against Vitale before you disposed of—there was another case developed against Vitale, that by this file, you know about that? That was while you were in office, was it not?

A. I don't remember this case.

Q. Your name is on there, isn't it?

A. Well, I probably had it, but I say I don't remember it. I don't have any independent recollection of it.

1371 Q. All right. Mr. Glasser, you went down to Ottawa, Illinois, did you not? And you had an interview with a lawyer named O'Mara, and a man named Siminella, and you questioned him about this Vitale case, did you not?

A. Who? Who did I question? You mentioned two names, and you said I questioned him.

Mr. Ward: Well, if I remember right—

The Court: You questioned either one?

A. Yes, sir.

Q. Who was it?

A. O'Mara.

Mr. Ward continues cross-examination.

Mr. O'Mara in turn questioned Siminella. It was all in my presence. We were talking about it down there about the possibility of something being said about a fix in that case. That was in January of this year, after I got the Bill of Particulars. I heard Mr. Roth tell this jury that Kretske sent Rose Vitale to him.

A. Do you want me to read this, or don't you?

Q. No, just answer. Now, did you know in that report that there were numerous facts alleged, that a Chrysler automobile which was found in close proximity to the Vitale home was also found on the premises where there was an unregistered still, did you know that?

A. I don't have any independent recollection of it.

Q. Did you have any independent recollection of it when you went in before His Honor, Judge Barnes, who took the stand here?

A. I wouldn't have had an independent recollection of it, I would have had the report with me then.

I had a report. I did not tell Judge Barnes a word about Leo Vitale before he disposed of this libel case because it does not belong in a libel case.

Examination by the Court.

Q. Don't you think the Judge wants to know the entire background?

1372 A. No sir, no, it is not fair.

Q. Not fair to who?

A. It is not fair to anybody, to the claimant.

Q. I think the court ought to know.

A. Here are the facts—

Q. Don't you think the Judge ought to know about anybody that appears before him?

A. Yes, sir. Leo Vitale was not before Judge Barnes. You see, it is a knocked-down statement.

Q. There was one Chrysler Sedan automobile before Judge Barnes?

I was representing the Government in that case. I know now that Mr. Roth had filed an appearance for Rose Vitale, I didn't remember that.

Q. Do you want to tell this Court and Jury you just knew Rose Vitale was represented by Roth before Judge Wilkerson, you heard it in this courtroom?

A. No, I want to say when I got the Bill of Particulars, I just had it back—

That is the first time I ever remember this case, when I got the Bill of Particulars. I don't remember if Victor Dowd, the Agent for the Alcohol Tax Unit, was there in Court that day before Judge Barnes. I assume he was. He said he was.

Q. And Victor Dowd, after he heard you make the statement to the Court of the Libel, said to you, "Let me take the stand, and I will save that car for the Government of the United States." And you said, "Get the Hell out of here." Did you not?

A. I might have said it, I don't remember.

It is possible, I might have. I might have made that answer. I might have made that answer telling him to get the Hell out of the courtroom. He couldn't have saved the car for the government. I was prosecuting according to law. A libel is an attempt by the government to condemn a car which has been seized and forfeited to the government. They do that because that is the 1373 way they can get clear title to the car for the car—if the car is worth more than \$500.00—

Q. Mr. Glasser, will you tell this Court and Jury—

A. You don't want me to answer?

Q. All right, go ahead, and answer.

A. The libel law is to the effect after a car is seized, if the car is worth more, if it is seized by the Agents for the Alcohol Tax Unit, it is worth more than \$500.00, the Alcohol Tax Unit has it appraised, they have it appraised by its Appraisal Department, and if it is worth more than \$500.00 they will send it over to the District Attorney's Office, so they may file a libel, if the car is worth less than \$500.00—

Q. Aren't you talking about the matter of seizure rather than what a libel is?

A. That is the only way I can tell what a libel is.

I don't remember how many cases I handled when I was in the United States Attorney's Office, quite a number.

Q. Isn't it a fact, Mr. Glasser, if an automobile is found on the premises where there is also found an unregistered still, that if it is found within the enclosure, and you have got evidence which can establish that the

particular automobile found within the enclosure of the unregistered still, was on numerous occasions followed by the Alcohol Tax Unit, and observed and seen cans of alcohol being placed in it, and license number changed on it, and traced to the premises where the still is actually found, do you consider that fairly good evidence that the automobile was being used to defraud the United States Government out of the taxes on alcohol?

A. Yes, sir.

Q. That is what was done in the Vitale case?

A. No, sir, you are showing me a criminal file, and not the civil file, that is not fair.

The criminal file is not used in connection with the civil file. I never did. It shouldn't be. They have a 1374 special investigation, and special department that works on it, Judge.

Mr. Ward: Q. Mr. Glasser, in this particular case you wrote on here: "Under sentence, one year and one day should be No Billed on this evidence, not very strong." You wrote that, did you not?

A. Yes, sir.

That was what Mr. Dowd told me. I suppose I did know what was in the file at the time I wrote that on this file. I don't remember. I remember distinctly Dowd came in and told me to do it, I remember that distinctly. I wrote that on there because Mr. Dowd told me. I would have no way of knowing if that was almost immediately after this man Vitale was convicted in the Southern District, Dowd didn't tell me. That is right that I wrote that on this file as part of the records of the District Attorney's Office, that the reason I wanted this case No Billed was because the evidence was very weak. As I recall it, it was a knock-down still and there were a couple of cans of alcohol.

Q. All right. Now in this file doesn't Mr. Dowd speak about tracing this automobile?

A. I don't have any independent recollection of the file. I do have—

Q. So you went to Judge Barnes, then.

The Court: May I see the file, the statement that came with it, Mr. Dowd's statement?

Mr Ward: Q. Here is the particular part, your Honor (indicating.)

(Handing document to Court.)

Q. Now, after that Vitale case I mentioned, now after

the case before Judge Barnes, Victor Dowd came to see you, did he not?

A. When? After that? You mean right after? When was the case; I forgot the date, before Judge Barnes?

Q. Well, that was December 23, 1938.

A. Yes, I think so.

He did not tell me that he was down around Peru and that there were five or six people saying that the 1375 Vitale case was fixed for nine hundred dollars and he wanted to bring the witnesses up here. He never did have that conversation with me at all, never in his whole life.

Q. But you did go down to Ottawa to talk to somebody about a fix in that case?

A. Yes, sir.

I recall Mr. Cohen who testified here and I recall that after he left the building bringing him back over to the building. I did not tell Mr. Cohen I had heard a rumor to the effect that the Widzes case was fixed and that he had said something like that. I said to Mr. Cohen, "I heard you got out of the case because somebody who was supposed to have a fix with me could go along." Then I took a statement from him. I first discussed it with Judge Igoe. There was some talk about fixing, that is the reason I sent for him. I do not recall when I first met Colonel Bailey. I had no idea at all but it was prior to the conviction of those twelve men in that McHenry case. He came a month after the Yellowley case started, that started in April and he came in May.

Q. I am not going to ask you anything about it.

A. You won't scare me if you do. I will answer.

Q. What was the first time he came?

A. I don't recall, but it was before January.

Q. To your office?

A. He came here in May of 1937, he so testified to that.

He testified he came here in May of 1937. I probably did see him during May of 1937. I don't remember how often, you say the McHenry case was in 1938, in January, and I must have known him before that time, but when I don't remember, I don't remember, you might refresh my recollection. I did take him in with me to see Mr. Igoe.

Q. And at that time you had that report, didn't you? I mean you didn't have that report?

A. Oh, I think we had that report. I wouldn't know whether I would take him in if I didn't have the
1376 report. I have been studying that, trying to think of the logical thing I would do.

Q. Forget the logical thing.

The Court: What is the number of that exhibit?

The Witness: 160.

Q. And you visited Judge Igoe's office, he was then the District Attorney?

A. Yes, sir.

Q. Did Mr. Bailey have that, and did you have that in your possession, that Exhibit 160?

A. I don't remember. I imagine I did.

Mr. Ward continues cross-examination.

I don't remember if Colonel Bailey and I entered Mr. Igoe's office on January 25th, 1938. I just don't know. My recollection is that it was only once that I was in to see Judge Igoe with Mr. Bailey, and it may have been more. I don't remember. I might have had a conversation with Colonel Bailey about wanting to have a nice case to try that would last two weeks. I would say I did. When I looked at this report, Exhibit 160, I knew it referred to the Hodorowicz.

Q. Now at that time did you know that Judge Igoe had been trying to, for a long time, to get the Hodorowicz?

A. It was I who was trying to get the Hodorowicz.

I was out to get the Hodorowicz. I would say to Judge Igoe the Hodorowicz were the biggest operators in town. I was trying to get a case against them. I was very anxious, I went to Washington and reported it and they sent an agent here. I was anxious to get them. I read through this report. I wouldn't know how long it took me. I don't remember how long it took me to read the report. I have no idea, I tried two cases on that report but I have no idea. If I look at it I can remember the names in this report. I remember the Hodorowicz bunch, it was Frank Hodorowicz—

The Court: What were your conclusions?

1377 A. My conclusions were these, Judge, this was a conspiracy report and if tried, it would take a considerable length of time to try the conspiracy as Judge Igoe told me and as he testified to here, it is simply a catch all, a hold.

Mr. Ward: I object to that.

A. That is what Judge Igoe told me.

The Court: Were your conclusions that there was sufficient evidence there to support an indictment?

A. There was evidence here to support an indictment and I did indict them. I did bring back two indictments.

Mr. Ward continues cross-examination.

That is right, I indicted Frank Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clem Dowiat in one case for twenty-five gallons of alcohol. There was a directed verdict on Frank in this case. That is right, so I have one left, which is the thirty-five gallon indictment, whatever it was. I did know at that time that the Anthony Hodorowicz, mentioned in that report, was the same Anthony Hodorowicz who was mentioned in that indictment or who was indicted by me and the case on Judge Woodward's call and was stricken off with leave to reinstate.

The Court: How long was that report in your possession before any indictment was returned on the evidence?

A. Well, this report was written on April 21st, 1938, and I believe the agent testified he brought it about a week later, which would make it April 28th, and I think the indictments were returned about forty or fifty days later.

Q. Now you say this—if you knew Anthony Hodorowicz.

A. I didn't say I knew him. I would say he was the same fellow in this other case.

The Court: When you say "indictments" what do you refer to?

A. These two indictments, Frank Hodorowicz—

I remember the Anthony Hodorowicz, Clem Dowiat, and Claude Swanson case that was stricken off before 1378 Judge Woodward. The Anthony Hodorowicz in that case was the same Anthony Hodorowicz who was in the 160 report. There was a Claude Swanson in this case with Anthony Hodorowicz and Clem Dowiat.

Q. And was Claude Swanson also in that case?

A. That was Carl,—Elmer.

Q. In that case, too?

A. Yes, sir. I think it is based on that case, isn't it? I think this case is based on that one.

I never tried the one I struck off before Judge Woodward because Mr. Ritter asked me not to. That was in that report.

Q. So far as Anthony Hodorowicz is concerned, who was one of the four Hodorowiczes, he has never been convicted of anything by you, isn't that true?

A. By you, either.

Q. I did not ask you that, Mr. Glasser, I did not ask you that. Is that true?

A. That I never convicted him?

The Court: That is the question.

A. Yes,—no, I should say I did not convict him.

Mr. Ward: Q. And Claude Swanson who was also in that report, was never indicted or convicted by you, is that right?

A. No, that is wrong.

The Court: Q. What is the fact?

A. I did indict him.

Mr. Ward: Q. And convicted him, I said.

A. You said indicted or convicted.

It is true that I indicted him and struck the case off, and he is mentioned in that report. I never tried him on that old case. I had that case in my possession twelve months before I left the District Attorney's Office, twelve months, about as long as I am out of the District Attorney's Office now. Some of the handwriting is mine on the District Attorney's file in 37094, *United States vs.*

Clem Dowiat, Anthony Hodorowicz and Claude 1379 Swanson. I think the word "closed" is in Miss McGarry's. She was my secretary. Miss McGarry marked it closed, I didn't.

The Court: Would she do that without any instructions from you?

A. Sure. I can explain why.

The Court: Explain why.

A. I had written the motion, the Government's case continued generally. In her handwriting much later, it says, "Case stricken from docket with leave to reinstate."

Mr. Ward: Q. How long has—

The Court: Q. How long has Miss McGarry been your secretary?

A. Thirty-five years.

Q. She has been a faithful employee for thirty-five years?

A. Yes, sir.

Q. Do you mean to tell me she would mark it closed without any specific instructions from you?

A. Absolutely. She—

The Court: All right.

A. The fact is,—

The Court: All right.

Mr. Ward: Q. So when you got through with the case before Judge Woodward and you had convicted Frank Hodorowicz and Clem Dowiat, Pete and Mike, they got nine months?

A. Frank Hodorowicz got a year and a day.

I would say Colonel Bailey came to my office many times before I actually tried the case before Judge Woodward; how often I would not remember. I would say he was there frequently. He was right on that case.

Q. He wanted you to indict all these people for conspiracy and clean up that whole South Side, didn't he?

A. That was not the reason.

1380 Q. In that jacket 160, you had substantive offenses on Clem Dowiat, Elmer Swanson, Patsy Del Rocco, Pete Hodorowicz, Anthony Hodorowicz, a man named Kazmierczak, a man named Jankowski, and a great many others supposed to be affiliated with the Hodorowicz mob, didn't you?

A. That is probably true.

Q. In your conspiracy indictment, if you had drawn one, there was nothing to prevent you putting in the substantive counts?

A. No, but I was under instructions. Not to present a conspiracy indictment.

I was not under instructions from anybody not to try to get Clem Dowiat. I was not under any instructions from anybody not to try to get Anthony Hodorowicz, and if I had been in the District Attorney's Office, I would have had him. I was not under instructions from anybody not to try to get Patsy Del Rocco, nor all the rest you mentioned. I say I was under no instructions to let anybody out.

Q. So far as Judge Igoe was concerned, he wanted you to get the Hodorowicz's, didn't he?

A. Yes, he told me to proceed by—

Q. And it was in your hands to do that?

A. You don't let me finish. I don't know what you want me to answer. You ask a question and then don't let me answer.

Mr. Ward: Well, strike them all out.

Judge Igoe wanted me to get the Hodorowicz's mob. I

was more anxious than he was to get the Hodorowicz's mob.

The Court: The question was, did you know whether he was anxious to have these men brought before the Court?

A. Yes, sir.

Mr. Ward continues cross-examination.

I heard Agent Donahue testify here.

Q. You heard him tell about tracing these fellows and getting all these facts and evidence against them?

A. Which fellow?

1381 Q. This Hodorowicz crowd.

A. Donahue was the fellow in the Pete Hodorowicz and Walter Hort case.

I remember that very well because I remember the Hodorowicz people very well:

Q. That is the case where people testified Hodorowicz went up to the North Side with the eight hundred dollar payment to Mr. Kretske, wasn't it?

A. Yes. May I explain that?

Q. Just answer my question.

A. All right.

Mr. Ward: Mark this No. 211.

(Document marked as requested.)

There is writing on that file No. 211 in my handwriting. There is written on that file "closed." That is in my handwriting. That is not Miss McGarry's handwriting, that is mine. (Indicating.) That is not mine.

Q. That is closed, is it not,—Albina Zarrattini?

A. Yes. This is not mine.

Q. I don't care about the handwriting. I am not concerned about that, but the Zarrattini case is closed?

A. That is what it says.

That was put on by me. That means the file goes back to the front office. Zarrattini was found not guilty. I don't remember her. I may have had a talk with her in this building where she wanted probation. I may have had a talk, but I don't remember. I don't remember it at all. I have no recollection of that woman. When I say I may have talked to her, I mean by that I am just venturing a guess that I talked to her. I have no recollection at all. I believe I do know a man by the name of Nick Girardi. I believe he was in the sugar business. I do not know where he had his business. I only remember Eddie Wroblewski from here, seeing him here. I would

not remember if I had not seen him in Court, but I
1382 knew about that name before I came to Court here
from the Bill of Particulars or the indictment, what-
ever it was. I do not recall Eddie Wroblewski being in
my office.

Q. Often would you see Mr. Roth during the year of
1937?

A. I don't think that Roth had any cases in 1937. If
he did, he only had a few, so I don't remember what was
about the first case.

Q. Do you recall how often you saw him in 1938?

A. He came up to my office very often, in 1938.

I don't remember him ever telling me he was repre-
senting Eddie Wroblewski down in Indiana. I talked to
Roth about cases like one lawyer with another. I don't
think he ever said, "I am trying a case down in Indiana
and having a tough fight."

Q. He never talked that way to you?

A. He talked so much I didn't listen to him.

Q. You did all the listening and he did the talking, is
that it?

A. Practically.

I don't recall him having told me about being down in
Indiana; I mean while I was in the office. I don't know
that he had been in Indiana. How would I know. I never
found that out, while I was in office. I did after I was
out of office. That is right, I said that I never had the
pleasure of meeting Mr. Kaplan until I met him here as
a defendant in this case.

Q. And do you mean when we started trial here?

A. I never met him. I haven't met him yet.

Q. You haven't met him yet?

A. That's right.

Mr. Ward: Will you stand up, Mr. Kaplan?

(Defendant Kaplan arose.)

Q. Is this the man you are talking about?

A. That is the man who wasn't there.

The Court: Is this the man you are talking about?

A. The man I don't know, yes, Judge.

1383 Mr. Ward: "He was not there again today, I wish
to God he'd go away."

The Witness: A. That is right. It don't make any
difference to me, you can send him away if you want to.
It don't make any difference to me.

When I heard the name of Louis Kaplan as defendant

in this case, I did associate that name with some case I handled in my office. I didn't know, but assumed that when he was named as a defendant in this case, it was the same Louis Kaplan that the Grand Jury had No Billed against. Some days after September 29, 1939, I received a copy of this indictment, a very short time thereafter. I read it that day. I knew Louis Kaplan was a defendant on September 29, 1939.

Q. And you tell this Court and Jury that you never met Louis Kaplan and have not met him yet?

A. Never in my life.

Q. Now, what is your definition of the word "met?"

A. Well, I like to be formally introduced to people. Then I meet them.

I was not introduced formally or informally. I never talked to the man in my life. I was never introduced to him.

Q. You were not in before the Grand Jury and had the two Kaplan cases, one alongside the other?

A. I don't know whether they were alongside the other or not. I don't know what you mean.

That is true that I had a conversation in Judge Igoe's office with Mr. Sylvan White, regarding Mr. Kaplan. At that time I made the statement that Louis Kaplan was a notorious bootlegger. I said that to my superior and Mr. White was there.

Q. And you were the vigorous prosecutor?

A. Yes, sir.

Q. And were talking to your superior?

A. That is right.

Q. Saying that Louis Kaplan was the most notorious bootlegger around the City of Chicago?

A. The Judge wouldn't let me make a speech like that.

1384 Q. Did you say that?

A. No, not the way you said it. He would run me out of the office.

I said that the Alcohol Tax Unit says this fellow Kaplan is a big time operator and I think it is a good case. I would not have taken it to the Grand Jury if I did not think there was sufficient evidence. When the Grand Jury No Billed the Kaplan case I was not still under the impression then that there was sufficient evidence to get an indictment.

Q. You just said a minute ago that you wouldn't take

the case before the Grand Jury unless you thought you had sufficient evidence to get a conviction.

A. Yes, but your question is not that. Maybe you don't remember the question. Maybe you better have the reporter read it.

Q. I remember the question all right.

A. Let the reporter read it.

Q. You said you would not take the case before the Grand Jury unless you thought there was sufficient evidence to get a conviction, is that right?

A. That is right.

Q. And I asked you, after the Grand Jury returned a No-Bill in the Kaplan case, you still were under the impression that you had sufficient evidence to go before the Grand Jury?

A. Not after they returned a No-Bill.

Q. After they returned a No-Bill, you thought that was the end of it?

A. Yes, sir, unless more evidence could be had.

Q. And that was the same day that you No-Billed the Kaplan, Widzes and Dewes case?

A. Well, the Judge said I should not split hairs. I presume you mean the Grand Jury?

Q. You know, among us prosecutors, we have certain little expressions we use, don't you?

A. Yes, but I don't want the Jury to get the idea—

1385 Q. You know the prosecutor will say, "Dan, did you get a No-Bill on that case?" You know that, don't you?

A. Yes.

Q. Or "Dan, did you indict Joe Smith?"

A. Yes, but the Jury don't know that vernacular.

The Court: Perhaps you had better talk in plain language.

Mr. Ward: Q. When I say, "indictment" and talk about the Grand Jury, that is twenty-three men, is that right?

A. Sometimes.

Q. Sometimes less, but never less than how many?

A. Never less than sixteen, I think.

Q. All right. Now, when they returned a "No-Bill" in the Kaplan case, you had those cases right alongside one another, the two cases against Kaplan?

A. There are two questions there. You said "one alongside of the other" and "two cases together."

Q. I think they run 22 and 23.

A. One right after the other, it might be.

Q. Now, when you had these two cases,—I will get the Grand Jury minutes in a second. When you had this Western Avenue still case alongside of the Spring Grove case, did a Grand Juror say anything about "who is this man Kaplan with all these cases?" Did they say anything about that?

A. I don't know, Mr. White, I think, talked about the Spring Grove and Mr. Campbell about the Western Avenue.

I was present in the Grand Jury at one time when the witness identified Kaplan. I had heard some witness talk about Kaplan before. I have heard lots of witnesses. Lots of witnesses, agents. Not before the Grand Jury.

Q. I am speaking about the inside of the Grand Jury room, so you won't be confused.

A. I don't recollect what the testimony was against Kaplan now.

1386 Q. When you put a case on, going to present a case to the Grand Jury of John Doe and Richard Roe, what is your step?

A. Jacketed case or unjacketed case?

Q. Where a man has violated the law.

A. There are different ways in presenting cases. The Alcohol Tax Unit has two departments.

Q. I am not speaking about the Alcohol Tax Unit.

A. I have—

Q. I will withdraw the question.

A. Then I will not answer it.

When I go in before the Grand Jury, I have a slip made out for the purpose of helping the secretary. That is true. I used to have Miss McGarry make it out for me, but it was done under my supervision. That is true that the first thing I usually do in the Grand Jury room is to hand that to the secretary, so he will know the names of the persons he can put on the Grand Jury minutes.

Q. The names that appear on here are the names that are on your slip?

A. Sometimes they are the names that are on the slip, and sometimes the names that develop during the hearing.

But I start out with my slip. Mr. White said that he considered Kaplan number one man and put his name as

number 1 on the blackboard. He was the most important man, as far as that case was concerned,—he was the number 1 man on the blackboard.

Q. He was not important off the blackboard, was he? The day you presented the matter of Raubunas, Widzes, Kaplan and Boguch, there was a No-Bill returned. Was that the same day you had on the Kaplan case, was it?

A. The day that Kaplan was No-Billed was the same day he was before the Grand Jury.

Q. I did not say that.

A. I didn't understand the question.

1387 Q. I say that on the same day, alongside of one another on the Grand Jury minutes, there appears Louis Kaplan was under consideration by the Grand Jury in two separate cases, is that true?

A. But it says "no witnesses attended."

Q. I asked you, is that true?

A. That both cases were presented to the Grand Jury on the same day?

Q. You had them on for presentation the same day, isn't that true?

A. That's right.

Q. You No-Billed one, the Widzes, Kaplan, Raubunas and Dewes case, and withdrew from the Jury's consideration, the other Kaplan case?

A. It says Raubunas, Kaplan, Widzes and Boguch, No-Bill; and the others were withdrawn by the request of Daniel Glasser and no witnesses were taken.

That is right that there were no witnesses at all that day. I don't remember that I did not ask any witnesses to come that day, I don't know why there were no witnesses there. I have no recollection of it. I recall one of the Duckett cases. I do not know that there was a rule of procedure in this court house, followed by the Executive Committee of the District Judges, that if a man, if more than one indictment was returned against a particular defendant, that the Judge who would get one case, would get all the cases. I thought it was the custom or practice of the Clerk's office to assign them all to the same Judge.

Q. Yes, so after you indicted Farber in the Beisner case and indicted Farber in the Duckett case, those two cases would go to the same Judge, is that true?

A. If they were both pending at the same time, they would.

In that way the Judge would have opportunity to see just how active the particular defendant was as a law violator. I did not indict Farber in the Beisner case.

Q. Because it was on the same day that you indicted Duckett, Farber and Weber, is that right?

1388 A. I don't remember that. That was not why that was No-Billed. You said he was No-Billed, because of that.

Q. I did not say "because."

A. You started your question with "because."

I do not remember that the Grand Jury returned the Duckett, Farber and Weber indictment on November 1, 1938; and on the same day the Beisner indictment was returned, but I suppose it is true if you say so. That was not true that Farber was caught right on the still premises with Adam Widzes in the Beisner case.

Q. That Farber was not caught in an automobile with Widzes on the Beisner farm?

A. You said in the still premises.

Q. Yes.

A. He was caught on the farm.

Q. It was a farm, was it?

A. And he drove on the farm.

Q. And was caught fifty feet of the barn back of the house, isn't that true?

A. That is not in the still premises.

Q. Well, of course, he was not actually in the barn, he did not drive into the barn.

A. The Courts have held different.

Q. He was found on the still premises, was he not?

A. Absolutely, but—

I don't remember if there was found in that automobile some implements that a person manufacturing alcohol would use. Oh, yes, I remember a certain kind of sieve. I don't remember that the automobile that Farber was found in, had all the back seats and cushions ripped out. I don't remember that. I don't remember that there was also some gasoline oozing out of that automobile and that

the agents believed there was a stream of alcohol
1389 emanating from the car. I remember the sieve. I remember Widzes' fingerprints were found on a lamp over a still—in some still. I don't remember when I learned of it or anything else, but I remember that. And his fingerprint was developed by the Alcohol Tax Unit and identified as the fingerprint of Adam Weges, I remem-

ber something like that. That is the man who was sitting in the automobile with Farber on the still premises. I think that is right that Farber's nephew was Ed D'vorak. I don't remember where he lived.

Q. After the arrest, he fled the jurisdiction, and that Farber's wife sent his clothes to him at some place in Iowa, do you know that?

A. Farber fled the jurisdiction and his wife sent his clothes to him some place in Iowa?

Q. D'vorak?

A. I don't know if his wife sent his clothes to him some place in Iowa. I didn't even know he left.

Q. Well, if you want to insist on being facetious, I said D'vorak.

A. D'vorak left the jurisdiction and his wife sent him his clothes.

Q. I said D'vorak went to Iowa and Farber's wife sent him his clothes.

A. I don't know anything about that.

D'vorak was a nephew of Eddie Farber, I knew that. I heard Mr. Connors testify here. I don't think I handled the disposition of Duckett. I might have, but I have forgotten.

Q. I think that as a matter of fact you were out of the office when it was disposed of?

A. Then I was not, you said I disposed of it.

It is true that I was in the case at the start. I don't remember if Mr. Roth was in the case too. No, I don't remember.

Q. And do you remember the testimony here where Mr. Duckett said that he was in the grill on South Dearborn Street—7 South Dearborn Street, when Kretske had a conversation and that Kretske left the place to go over and see you. Do you recall that conversation?

A. Do I recall that testimony?

1390 Q. Yes.

A. Yes.

That does refresh my recollection. That is one case you disposed of. I had a Buick automobile in 1936. It was a green Buick with white side walls as Paul Stryke said. That is right. I knew that Colonel Bailey was a special investigator of the Alcohol Tax Unit. He came to my office as a representative of the United States Government to confer with me regarding official business, that is true.

Q. He continued to confer with you regarding official

business after the said Hodorowicz case was tried before Judge Woodward, that's right, isn't it?

A. I don't like to say that.

It was just soon after that that I had no further dealings with Colonel Bailey so far as I was an Assistant United States Attorney. I don't know if I wrote the brief or had anything to do with the writing of the brief in the Paul Svec case. You see the Alcohol Tax Unit wrote most of the briefs for me and I imagine that they wrote that one too. I think Gilmore wrote that brief. I am not sure. I did not have anything to do with the brief in the Hodorowicz case. I would not sign a bill of exceptions because it was wrong in that case. The case was affirmed, but the bill of exceptions was not correct.

Q. As a matter of fact I wrote the bill in the Hodorowicz case.

A. I am not trying to intimate there was anything wrong with it.

Q. In arguing the case in the Circuit Court of Appeals, it was affirmed?

A. Yes, sir.

I did have something to do with the appeal. When they presented the bill of exceptions to me I said it was wrong and said, "I won't sign it." It was not turned over to me, it went over to Mr. Campbell and he signed it. He does not sign all of them. They are all signed in the name of the D. A., but he signed this personally. I had nothing further to do with it. I had nothing further to do with the brief. All of the time when I was dealing with 1391 Colonel Bailey on the Hodorowicz case he was coming to me and giving me facts regarding the violation of the Alcohol Tax laws that Hodorowicz and the crowd were supposed to be committing. He came to my office there in 857 and would ask for a conference and I would give it to him. I would sit down and talk over official business. That's right. I would say from his personal appearance and attitude in the case, Colonel Bailey did appear to me that he was anxious to prosecute the Hodorowicz case.

Q. You thought he was performing his duty in an honest and conscientious manner, did you not?

A. Well, if you please set the date I will answer it.

Q. Did you at any time? Well, I will set the date: Let's take up until the time you disposed of the Hodorowicz

case, was he performing his duties in an honest and conscientious manner, yes or no; I am asking you now?

A. Well, I am just trying to think—well, if you will let me think.

Q. All right, regarding the Hodorowicz case?

A. I am just trying to recollect. One thing came to my attention, and before I would answer that question I would have to think about that. I would say the answer to that is “no.”

Q. That he did not.

A. That he did not.

The Court: What was the question?

(Question read by the reporter as follows:)

“Did you at any time? Well, I will set the date: Let’s take up until the time you disposed of the Hodorowicz case, was he performing his duties in an honest and conscientious manner, yet or not; I am asking you now?”

The Witness: I say “no.” That is the way I felt about it.

The Court: Q. Mr. Bailey did not perform his duties in an honest and conscientious manner?

A. That is my interpretation of how I felt—nothing dishonest, he was not taking any money from anybody or anything like that.

Mr. Ward: Q. Why do you characterize it that way?

A. Because I have just been trying to recollect, and that is the reason it took me so long to answer. When I had Frank Hodorowicz in my office and he told me he wanted to plead guilty and I told him I would recommend five years for him if he would plead guilty, I have a recollection of having been—and a few days later I told Bailey that Hodorowicz wanted to plead guilty, and asked me what I would recommend and I said I would recommend five years and subsequently I have a recollection now of hearing—I just can’t recollect from whom—that Bailey went out to Hodorowicz and he said to him: “Now, here is Glasser, he wants to get five years.” This was three or four days after I had had a conversation with Hodorowicz. He said: “Here is Glasser, he wants you to get five years.” “So far as the Alcohol Tax Unit is concerned, we only want you to get three years.” Bailey said: “What is the matter with Dan up there? Does he want you to give him some money and you won’t give it to him.” Now, so far as I was concerned, I felt that was not an honest approach.

Q. Now, Mr. Glasser, as a matter of fact, Colonel Bailey had a conversation with you in which you said that they were going to get the Hodorowiczs five years and that Bailey said: "Well, that's all right—five years is fine, but we will be satisfied to settle for three." Do you remember that conversation?

A. Yes, sir.

He told me that he would be glad to settle for three. Perfectly satisfied for Hodorowicz to get three years. I talked to Horton about Bailey after I was indicted. I talked to him before that time.

Q. You talked to him about going out to Frank Hodorowicz?

A. Who? Me?

Q. Yes. Going out to Frank Hodorowicz? No. About Horton going out there?

A. Oh, I thought I went out there—I talked to 1393 Frank—when, now? I would appreciate your fixing the time because, you see, I left the office three or four months before I was indicted.

Q. This conversation, Mr. Glasser, directing your attention to shortly after the Hodorowiczs were convicted, did you have a conversation with Tony Horton about Bailey?

A. Well, while I was still in the office?

Q. Yes.

A. I don't recollect any conversation with him. If you refresh my recollection about what the conversation was, I will tell you whether I had it or not. I don't recollect what conversation you have reference to.

Q. Did you have any conversation with Horton about Bailey?

A. Sure, I say I have had lots of conversations with Horton.

Q. After the Hodorowiczs' conviction.

A. I was only in the office about two months after the Hodorowiczs' conviction.

During 1937 and 1938, all of the time when I was in the office, I would see Horton, many times when I was with you. Many times you and I would be talking down the hall together and we would see Horton. We would see him in the District Court. That is right he would walk back and forth there into the different offices. I would not say that I would see him quite often in my office. He would come in and ask me if I would not recommend some

bond be reduced or something. I do not remember the Kasmerzics case. I remember the man Ostrowski that testified in this case but I don't know him. I prosecuted an Ostrowski. I don't remember if it was a man about 78 years old.

Q. There was a still found in the place at Ostrowski's and Steve Ostrowski's father was indicted, the grand jury indicted him at your request, that is right, isn't it?

A. If you say so. I don't remember. I would say yes.

Q. In that case you knew Mike Hodorowicz, didn't you?

A. When? I don't know when that case was.

Q. I asked you, did you know Mike Hodorowicz?

1394 A. My answer is I do know Mike Hodorowicz.

He is a brother of Frank. That is the man I convicted and he got nine months. I do not know whether or not he signed Kasmerzic's bond. How would I remember that? I say I don't remember. I don't have any recollection of that Kasmerzic's case. I have a sort of recollection of the Ostrowski case because I remember the lawyer that used to come up to see me regularly about it but I don't remember its disposition. I don't know whether I did or not at that time know that he was the father of Steve. I don't know Steve. I don't know where the still was. No, gosh, no. I did not have any idea that it was part of the Hodorowicz mob. I didn't know that. I was anxious to get a man named Kanzenback who lived up in Waupun, Wisconsin and was seventy years old.

Q. Who is it that serves warrants, after a man is indicted and a bench warrant is issued, who has to do with the apprehension and service of the warrant?

A. Service of the warrant is generally handled by the Marshal, but the apprehension—

Q. Just a minute.

A. You asked me two questions.

The Court: Answer the question.

The Witness: He asked me two questions.

The Court: They are returned to Court and filed with the Clerk of Court and then they are turned over to the Marshal.

The Witness: For service—but the apprehension—he asked me the questions, Judge. The agents of the Alcohol Tax Unit generally go out and try to find these men.

The Court: The papers are actually served by the Marshals, aren't they?

The Witness: Yes, sir.

1395 I never was in Waupun in my life.

Q. You called up the Chief of Police and it was so small you talked to him and said: "Is Kanzenback out in the square?" "Will you go out and look for him?" "Isn't that true?"

A. I don't know what size town it is.

I did say that.

Q. You didn't think it was a very big place that you would call up a Chief of Police on the telephone and he should go out in the square and get the man, did you?

A. I did nor I would not have asked.

Q. You thought it was a big place?

A. I thought he would be able to get him.

Q. You thought it was a small place?

A. I didn't think it was a very small or large, that is the town where the penitentiary is.

Q. Now answer, is it small or large?

A. I would say it is a small town.

Q. And the Marshal with his writ would have no trouble getting Mr. Kanzenback in a small town, would he?

A. I don't know. He ought to.

Q. So the Marshal up in Milwaukee or wherever this place was that you say—he would not perform his duty conscientiously either and you had to go up there and perform it for him, is that right? Yes or no?

A. Yes.

The Court: Q. What led you to believe the United States Marshal of the Eastern District of Wisconsin would not perform his duty?

A. I didn't think of the Marshal but it was given to them for attention—that I would have to think about it.

Q. Was there anything in your experience with the United States Marshal that indicated anything like that?

A. I didn't know the Marshal at all, no, sir.

1396 Q. You say, there is no reason why you believed there was, and there was nothing to make you believe he would not perform his duty?

A. But the way Mr. Ward put the question, it was before then, your Honor, put it.

Q. If that writ was filed and presented to the Marshal of Waupun or in the District, there is no reason why you know he would not serve that writ?

A. May I say this, in connection with that writ?

Q. Just answer this question: There is no reason why he would not have served that writ, as any other writ?

A. The Marshal—

Q. That is the only one supposed to serve it.

A. I gave that writ to Frank Coonan and he said: "I will take it up to him." And I did not mail it to him.

(Mr. Ward continues cross-examination.)

I did journey to Milwaukee. I don't remember how I went. I just can't remember how I went up there, whether it was by the electric or by automobile. I don't know who paid my expenses. I suppose the Government paid it. I don't know. I really don't know. I know as an Assistant United States Attorney, that the disbursing officer in this District is the Marshal and he is charged with the service of the writs and he gets paid for that by the United States Government.

Q. And you know there was no fund set aside by the United States Government to reimburse Assistant United States Attorneys for a man running over to different states trying to serve writs.

A. You should have asked Judge Igoe.

Q. I am asking you.

A. I had nothing to do with that. He was my superior. I had to do what I was told.

1397 I did talk to Judge Igoe about Abesketes before I went up to see about Kanzenback. I said I understood that he was a big operator. We had no report on Nick Abesketes in our office. I don't know how long I spent talking to Judge Igoe about Abesketes. That is a couple of years ago. I don't remember. I do remember that my superior told me to do something, I remember that because I remember the reason for it. I heard Judge Igoe testify.

Q. First he said he thought it was Kanzenback.

A. First he thought it was Abesketes.

Q. Then a fellow named Brown?

A. He is in the same position I am. We are not memory experts, you know.

Q. You did not remember about that conversation on Abesketes?

A. I didn't remember? I remember it.

Q. As it referred to Kanzenback?

A. I remember, yes, I remember, sure. I said that I remember.

I went down to Washington on that case where I got twelve convictions, for the purpose of having these defendants have their sentences reduced. That's right. I

don't remember if I talked to Judge Woodward before I went to Washington about the sentence reduction. I think I did. That calls it to my mind. I think I did. I did tell Judge Woodward I was going to Washington to try to have those sentences reduced. I think the conversation I had with Judge Woodward comes to my mind, and I would not be surprised but what somebody from the Alcohol Tax Unit was there.

Q. Just answer the question.

A. I am thinking out loud.

I remember that we went to Judge Woodward, I have a faint recollection of having gone to Judge Woodward after the sentences by him and asking him something about reducing the sentences and I think he said— Well, it seems to me somebody was with me. I don't remember but it seems to me somebody was with me from the Alcohol 1398 Tax Unit, was with me. I don't think it was anybody else from any other unit. There would be no reason for it. I could tell you who so you could find out. Either Mr. Bailey or Mr. Herrick.

Q. That went to Judge Woodward with you to talk about sentence reduction?

A. You scare me.

Q. No, I don't scare you.

A. Let me answer the question.

The Court: Finish the answer.

A. I have a recollection, which seems to me, that somebody went to Judge Woodward with me and if anybody went to Judge Woodward with me it would be Mr. Bailey or Mr. Herrick. Now, if either one of those gentlemen did not go with me, I went alone.

The Court: Q. Just a minute, on that point. Was it your solemn judgment that the cause of good government would be best promoted by turning these twelve defendants loose who had been convicted and in exchange have their testimony to convict Abesketes?

A. Yes, sir, it was the judgment of myself, Judge Igoe and Mr. Herrick.

Q. To turn twelve defendants loose on the streets who had been convicted of operating or involved in the operation of some still with Abesketes, in exchange for their testimony which might convict Abesketes, when Abesketes was at that time under indictment in the Eastern District of Wisconsin; is that your solemn judgment?

A. It is my solemn judgment, yes, resulting from con-

ference with Mr. Herrick and Judge Igoe. Mr. Herrick went to Washington for the same purpose I did, as I am being blamed with it, but he went down there with me.

Mr. Ward: I move these remarks be stricken out, so that they cannot be in this record to be argued later.

The Court: It may be stricken. I asked him about his own judgment.

1399 (Mr. Ward continues cross-examination.)

I went to Washington after the conviction. Judge Woodward did not say he would vacate those sentences. I think not. No. That's right that when I went to Washington I knew then that the Judge who sentenced the men would not vacate or modify the sentences.

Q. So now you are down in Washington and I think you said you warmed some bench out there for a considerable time?

A. Yes, sir.

I remember that. Then I got an interview about this sentence reduction and I came back to Chicago and the prisoners were over in the County Jail. That's right.

Q. Had you talked to Bailey before that or after that, wherein Brown's name was mentioned?

A. Before I came back from Washington?

Q. Well, you couldn't talk to him before you came back from Washington unless it was on the long distance phone and you didn't call him up over long distance, did you?

A. No, but I could have talked to him before I went.

I did talk to him in my office. Frank Brown was not present then when I was talking to Bailey. I never was in Bailey's office in my life. I had a conference with Frank Brown in Bailey's presence or Bailey and I had a conversation in Frank Brown's presence. I don't remember that Frank Brown told me that Nick Abesketes asked him to rent the Murdock farm. Mr. Bailey says that, but I don't recollect receiving a report on that. I don't remember if that was after I got back from Washington.

Q. That conversation about the Murdock farm?

A. No, but if you show me Mr. Bailey's report I will recollect. He would not show me that.

Q. Just a minute. I am asking questions, please, you are the same as any other witness.

A. I know I am.

Q. Look at that diary there, February 21, 1938,
1400 and look at the memorandum and then tell us whether it refreshes your recollection?

A. No, I did not remember that we were there twice, according to this we were twice.

I don't remember that. I don't know if that was after I came back from Washington. I really don't remember.

Q. Do you know, Mr. Glasser, when the defendants in that case which we will call the Murdock farm case, which is the case mentioned about the trading of twelve convicted prisoners for one, do you know when they were committed to the penitentiary?

A. No, sir.

Q. Does it refresh your recollection to tell you that it was in March of 1938?

A. I wouldn't know, I would not have a record of when they were taken down there.

Q. Well, it was after you got back from Washington, it was somewhat after February 25th, wasn't it?

A. I don't know when it was.

Q. And you haven't a recollection of that?

A. Not the dates.

Q. All right. Was it after you had a talk with Mr. Herrick and Mr. Byrnes, and was told by Mr. Herrick and Mr. Byrnes that the people from Wisconsin had sufficient evidence to convict Nick Abesketes, and that the prisoners should be permitted to go to the penitentiary on their mittimus,—do you recall that?

A. I don't recollect that conversation, no.

Q. Well, look at the docket sheet in this case, in 3621, and see if that does not refresh your recollection now, when the mittimus issued and these prisoners were sent to the penitentiary.

A. It says the commitments were issued, that they were committed to the penitentiary on the 22nd of March. That does not refresh my recollection, I didn't know anything about that.

1401 Q. What year?

A. 1938.

Q. As far as you were concerned, you knew then that the Abesketes matter was closed, as far as you were concerned in this district?

A. Yes, sir.

Q. Now, you recall the Svec matter, do you not?

A. Which Svec matter?

Q. Paul Svec.

A. Which case?

Q. Paul Svec in December?

A. Yes, sir.

Q. Was that about December 9, 1938?

A. About then.

I don't think I recall who the agents were in that case that arrested Svec. I think Newell was one and Kral was one. I did not call in Mr. Kral for a talk with him with reference to the matter. He was one of the agents making the arrest. I think I did call in Mr. Newell.

Q. Did you have any report on the Svec case from the Alcohol Tax Unit before you went in to the Commissioner?

A. I imagine I had the regular letter that they usually send, when a defendant is brought to the District Attorney's office.

I don't know Cahoon. I don't remember him. I have no recollection of Cahoon. I might know him if I would see him. I don't know if he was one of the agents in that case, or not. I recall the morning Svec was brought over to my office. I do not recall what agents of the Alcohol Tax Unit brought him over. There were two agents, as I recall, brought him over. I do not recall the agents' names. They sat outside my office. I asked them to sit outside. I wanted to talk to Svec. At that time Mr. McFarland was secreted in the closet,—in the room off my office. After I got through talking with Svec I did not take him in before the United States Commissioner. But we went in there.

For my inspection of the record, I find that the case 1402 was continued that day. And finally disposed of. Alfred Roth represented Svec. Svec was discharged.

Q. Now, between the time that the agents brought Svec into your office,—I am speaking now of December 9, the day that Mr. McFarland was secreted in the room, off your office, down to and including the time that Svec was discharged before the United States Commissioner, did you talk to Kral or Cahoon at any time and get from them the facts surrounding the rest of Svec?

A. I don't recollect. I probably did not, because that letter of transmittal would have had the facts.

Q. You are familiar with the rule of evidence, if a man is arrested and charged with commission of an offense, and he says nothing or attempts to bribe the arresting officer, that evidence may be offered as proof of the guilt of the particular offender, are you not?

A. Yes, sir.

I don't recall that I questioned Mr. Kral or Mr. Cahoon to find out whether or not Svec had attempted to bribe them after his arrest, I don't think I did.

Q. Well, don't you recall any evidence at all that was presented to the Commissioner before Svec was discharged?

A. The only thing I remember about the evidence presented is as to Svec, was that they were leaving a distillery somewhere on North Wells street and Svec drove by during the course of the seizure, and looked in the direction of the distillery; that the agent then chased him or followed him in a car for a block or two; that Svec stopped his car, got out of his car and started to run away and they caught him. That is all I remember of the testimony against Svec.

I saw Norton Kretske after that during the month of December, 1938. I saw Kretske at the Sherman Hotel. That was the night I was called at the Sherman Hotel. I did not request Kretske to come over.

1403 Q. Well, after Svec had said this, giving you this conversation in your office, and you said to him that you ought to punch him in the nose, is that right?

A. Yes, sir.

Q. After you said that, did you make any attempt to inquire from the agents just what Svec had told them when they were arresting him?

A. I don't recall that, I don't recollect any conversation with the agents about that.

I do not later recall indicting Bernstein and Naples.

Mr. Ward: Mark this with the next number, 212.

(Document marked as requested.)

Q. Does this refresh your recollection, No. 212, as being the file in the Bernstein-Naples case?

A. None of that is my handwriting.

My name appears at the bottom of it, but none in my handwriting. I don't recall appearing before the Grand Jury in that case. If you show me the report, I probably would remember. None of that is in my handwriting.

Mr. Ward: Mark this No. 213.

(Document marked as requested.)

The word "held" on file 213 is not in my handwriting.

Q. Well, directing your attention to the correspondence in this No. 213 at the left-hand corner, on several letters the name of Glasser appears, does it not?

A. Yes, sir, but none is my handwriting.

The name of Glasser appears there.

Q. Now, can you tell us what report you had from the Alcohol Tax Unit when you were in before the Commissioner, representing the government in that preliminary hearing in the Svec case?

A. Well, I probably had a letter of transmission, as they used to send them. In practically all cases, they send along a letter with the agents, when they brought the defendants.

1404 I do not recall them sending along a letter of transmittal in the Kwiatkowski case, I don't remember. They generally do in all cases. That letter is to inform me briefly what the facts are, so I can represent the government intelligently before the Commissioner.

Mr. Ward: Mark these Nos. 214 and 215.

(Documents marked as requested.)

Q. Are these the District Attorney files that you had in the cases of the convicted defendants in the Murdock farm case?

A. I think this is mine, and some of this is my handwriting. The dates are in my handwriting, and here it says, "Not guilty as to all defendants", is in my handwriting.

Q. There are the files in the case, aren't they, Mr. Glasser?

A. Yes. I don't think any of this is my handwriting.

Mr. Ward: Mark this No. 218.

(Document marked as requested.)

Q. I think you looked at 216. That is the docket entry?

A. Yes, I saw that.

Mr. Ward: Mark this 217.

(Document marked as requested.)

Q. 217 is the docket entry in the other case. There were two cases there, is that right?

A. I did not remember that there were two cases.

Q. Does that refresh your recollection?

A. I didn't remember there were two cases.

(Witness excused.)

ALLEN JOSEPH CHINNERELLO, called as a witness on behalf of defendant Daniel D. Glasser, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Allen Joseph Chinnerello. I am Pastor of St. Anthony's Church—Kensington. I do know the defendant, Daniel D. Glasser about one year and a half. I know the member of his family, I know his wife.

1405 Mr. Ward: Your Honor, this witness is called for the purpose of testifying to Mr. Glasser's general reputation, I presume, we will admit he knows him and that he would testify that his reputation was good, to save time.

Mr. Stewart: All right, we will accept that.

(Witness excused.)

SAMUEL R. BAYLISS, a witness called on behalf of the defendants, Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan

My name is Samuel R. Bayliss. I reside at 3712 Pine Grove Avenue, Chicago. My business is insurance. I do know the defendant, Norton I. Kretske practically all his lifetime. I was born about a block away from where he was born. I know all the members of his family, and have many mutual friends and acquaintances. I do know his general reputation as to honesty, integrity and a law-abiding citizen prior to September, 1939. It is very good.

Mr. Callaghan: Cross-examine.

Mr. Ward: No cross-examination.

(Witness excused.)

MEYER GOLDE, a witness called on behalf of the defendant, Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Meyer Golde. I live at 511 Brompton. I am a restaurateur. My place of business is located at 810 and 812 West Roosevelt Road. I know the defendant, Norton I. Kretske. I have known him all his life. I have been in business in that same general community there for thirty years. I do know his general reputation prior to September of 1939, as to honesty, integrity and a law-abiding citizen. Good.

1406 Mr. Callaghan: That is all. Cross-examine.

Mr. Ward: No cross-examination.

(Witness excused.)

SAMUEL MARTIN ROBIN, a witness called on behalf of the defendant Kretske, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Samuel Martin Robin. My profession is that of doctor for thirty-four years. My office is located at 901 West Roosevelt Road. I know the defendant, Norton I. Kretske, I have known him better than thirty years, I have been his family doctor during all that period. I do know his general reputation as to honesty, integrity and a law-abiding citizen. Very good.

Mr. Callaghan: Cross-examine.

Mr. Ward: You mean before September, 1939?

Mr. Callaghan: Prior to the indictment.

Mr. Ward: He did not say that, but I suppose that is what he means. No cross-examination.

(Witness excused.)

PATRICK J. MALLOY, a witness called on behalf of the defendant, Kretske, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Callaghan.

My name is Patrick J. Malloy. I am a priest of the catholic faith. I have been a priest twenty-three years. I know the defendant Norton I. Kretske since about 1920, I believe; since 1921, I believe the fall of 1921. I know his father very, very well. I visit their home.

Q. Father, prior to September 29, 1939, did you know the general reputation of the defendant, Norton I. 1407 Kretske, for honesty, integrity and as a law-abiding citizen?

A. I always recognized him as such.

Q. Was that reputation good or bad.

A. It was always good.

Mr. Callaghan: Cross-examine.

Mr. Ward: That is all, Father.

(Witness excused.)

The Court: At my request, the Government has furnished me with this. Let the record show that Nick Abesketes was indicted in the Western District of Wisconsin on January 27, 1936; and that he was indicted in the Western District of Wisconsin, July 20, 1938.

Mr. Stewart: Have you the disposition, your Honor?

The Court: To the indictment in the Western District, he pled guilty and was sentenced.

Mr. Stewart: Is that the case that was spoken of?

The Court: After that, the indictment in the Eastern District was dismissed. It covers the same subject matter, I know that for a fact.

Mr. Stewart: We will accept your Honor's credibility.

The Court: I happen to know something about Nick Abesketes.

The defendant Glasser during the course of the trial, offered in evidence, the following petition for a rule on E. C. Yellowley and Levi Z. Baker to show cause why they should not be held in contempt of court; and the answer of the said E. C. Yellowley and Levi Z. Baker thereto:

1408 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA

For the Northern District of Illinois.

United States of America,	} D. C. Number
<i>vs.</i>	
E. C. Yellowley and L. Z. Baker.	} of the April Term
	} in the year 1937.

PETITION.

Now comes Michael L. Igoe, Attorney for the United States of America, for the Northern District of Illinois, who prosecutes for the District Court in this behalf, before the Honorable James H. Wilkerson, one of the judges of said court for the United States of America, and respectfully give the Court here to understand and be informed:

That on April 5, 1937, a grand jury for the April, 1937 term of said Court in the said district and division, was duly impaneled and sworn before the Honorable James H. Wilkerson.

Petitioner further respectfully represents that upon the impaneling and swearing of the said Grand Jury, one Sidney S. Eckstone was appointed Foreman of the said Grand Jury by said Judge.

Petitioner further respectfully represents that subsequent to April 5, 1937, the day on which said Grand Jury was impaneled and sworn, E. C. Yellowley and L. Z. Baker, respondents herein, and each of them, well knowing the said Sydney S. Eckstone to be the foreman of said April, 1937 Grand Jury, did have private communications and conferences with the said Sydney S. Eckstone, Foreman as aforesaid.

1409 Petitioner further alleges upon information and belief and states the fact to be, that E. C. Yellowley and L. Z. Baker, did solicit, the said Foreman of said Grand Jury, Sydney S. Eckstone, to appear in a private Room of the Congress Hotel, situated in the City of Chicago, State of Illinois, in the division and district aforesaid, to-wit, Room 1822, on the evening of April 21, 1937, at, to-wit, 7:30 P. M.

Petitioner further alleges upon information and belief and states the fact to be, that said Sidney S. Eckstone,

acting upon the invitation of said respondents, did go to the said room, to-wit, Room 1822, in the said Congress Hotel, in the City of Chicago aforesaid, on the said night of April 21, 1937, at, to-wit: 7:30 P. M.; and petitioner is further informed and believes that the said Respondents, E. C. Yellowley and L. Z. Baker, both being present in the said room on the date set at the said time, did converse with the said Sydney S. Eckstone upon certain matters, and in connection with certain persons and things which were pending before the said April, 1937, Grand Jury, of which the said Sydney S. Eckstone was Foreman, and that the said conversations lasted approximately two and one-half hours, after which the said Sydney S. Eckstone, did leave the said Room 1822 in the said Congress Hotel, and that subsequently thereto on, to-wit, April 22, 1937, at, to-wit, 11:45 A. M. the said grand jury was discharged by the Honorable James H. Wilkerson, in the District Court of the United States for the Northern District of Illinois, Eastern Division thereof.

Wherefore, petitioner respectfully prays this Honorable Court that a be entered herein said respondents E. C.

Yellowley and L. Z. Baker, forthwith to show cause, 1410 if any, they have, why they and each of them, should not be adjudged in contempt of this Court for their said actions, and that the Court make such further order in the premises in accordance with laws as to the court shall seem meet.

M. L. Igoe,
M. L. Igoe,
United States Attorney.

1411 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

* * (Caption) * *

ANSWER.

The answer of Edward C. Yellowley and Levi J. Baker, described in the proceedings as L. Z. Baker, to the order of this Court to show a cause why they should not be adjudged in contempt of this Court for and on account of alleged actions as set forth in the petition filed in this cause by the Honorable M. L. Igoe, United States Attorney

for the Northern District of Illinois, Eastern Division, respectfully represents.

First: That they admit each and every fact alleged in the petition and volunteer to this Court that said acts complained of were improper. They respectfully extend to the Court their sincere apologies for such improprieties, but submit that as hereinafter appears such acts were not contemptuous of this Court.

And further answering the petition, Respondents aver:

Second: That at the time of the performance of the acts upon which this contempt charge is based the respondent Yellowley was and now is the supervisor of the Alcohol Tax Unit in the Bureau of Internal Revenue, Treasury Department of the Government of the United States for the Ninth District, with headquarters in Chicago, Illinois, and has been in the service of the United States for approximately thirty-eight years. That at said times, the respondent Baker was and now is the Senior Inspector in charge of the Retail Liquor Dealers Section in said Ninth District and has been in the 1412 service of the United States for approximately nine years.

Third: That prior to the date of the conversations alleged in the petition and admitted in this answer, both respondents had been called and testified as witnesses before the Grand Jury for the April, 1937 term of this court, and from the proceedings it became apparent to them that the inquiry being made by the Grand Jury was not directed to any criminal investigation or prosecution, but was merely an investigation into the administration of the Alcohol Tax Unit in Chicago, of which the respondent Yellowley was the chief officer and said respondent Baker, a senior inspector therein; that such inquiry was not of a nature and kind ordinarily and usually within the scope of a Federal Grand Jury's inquiry.

Fourth: That such conversations as were had by your respondents and the said Sydney S. Eckstone were not in connection with any criminal matters pending before the said Grand Jury, but related solely to the inquiry being made by the Grand Jury concerning the administration of the office of the Alcohol Tax Unit aforesaid.

Fifth: That the acts complained of in this proceeding were done without any desire or intent on their part to interfere with, tamper with, or to influence in any manner the action of this Court or the Grand Jury were done

with the sole affirmative desire on their part to be helpful to the said foreman, of the Grand Jury into the Administration of the Office of Alcohol Tax Unit in Chicago.

1413 Wherefore, respondents although conceding the impropriety of and apologizing for their acts respectfully pray the Court that the application in this proceeding, that they be adjudged in contempt of this court be denied.

E. C. Yellowley,
Levi J. Baker.

And the defendant Glasser further offered to prove that he prepared, presented, and prosecuted the rule against the respondents, E. C. Yellowley and Levi Z. Baker.

To which offer of proof the United States Attorney objected and which objection was sustained by the court, to which ruling of the court the defendant, Glasser, duly excepted.

(Whereupon the defendants, by their respective counsel, then and there rested their case.)

(Whereupon there was offered and received in evidence defense EXHIBITS NOS. 84 to 91, inclusive, and made a part of the record herein. Thereupon, there were offered and received in evidence as government's exhibits, EXHIBITS NOS. 164, 165, 166, 167, 168, 169, 171, 172, 175, 177, 178, 179, 216, 217, 213, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 120, 209, 92, 228, 229, 230, 231 and 232, and made a part of the record herein.)

1414 Thereupon, the government in rebuttal offered the following evidence:

THOMAS BAILEY, recalled as a witness for the Government in rebuttal, having been previously sworn, was examined, and testified as follows:

Direct Examination by Mr. Ward.

Q. You are the same Thomas Bailey that testified in this case previous to this?

A. I am.

Q. This may be repetition, but just when was it that you became connected with the Treasury Department of the United States?

Mr. Stewart: Your Honor, just a moment, I object to that, it is not rebuttal because we did not put in anything about when he was connected with the Treasury Department. I would like to hold down the rebuttal if we can, your Honor.

The Court: Well, whether that question was preliminary—

Mr. Ward: It was just by way of introduction.

The Court: Preliminary, leading up to it.

Mr. Ward: Yes.

The Court: Objection overruled.

Mr. Ward: Refreshing his recollection.

The Court: Objection overruled.

The Witness: 1926.

Mr. Ward: Q. Where were your services performed for the United States so far as your Treasury Department connections were concerned before 1926?

Mr. Stewart: I object. That is not rebuttal.

Mr. Ward: After 1926.

1415 The Court: It is not strictly rebuttal. I don't know, unless you have something leading up to it.

Mr. Ward: They testified this man run out of the south.

The Court: Objection overruled.

The Witness: I was stationed at Philadelphia, Wilmington, Delaware, Baltimore and the Western District of Virginia.

Q. Who was the judge in that district?

A. Judge John Paul.

Q. Who was the Assistant District Attorney or the District Attorney in that district?

A. The District Attorney was Joseph Chitwood.

Q. Did he have any Assistants?

A. Yes, he did. Frank Tavener and Howard Gilmer.

Q. Do you know who the Clerk of the District Court was?

A. Clarence Gentry.

Q. Was he Clerk of the District Court all of the time that you were in the south performing service for the Government?

A. Yes, he was.

Q. Did you investigate a number of cases involving violations of the Alcohol Tax laws which afterwards resulted in trials before the judge you have spoken of?

A. Yes, I did.

Q. Did you hold any decorations from the United States Government?

Mr. Stewart: I object to that. That is immaterial.

Mr. Ward: I want to show the character of this witness.

The Court: Objection overruled.

Mr. Stewart: That would not show his character now.

Mr. Ward: I want to show the type of character of the man they said was run out of the south.

The Court: All right.

The Witness: I was awarded during the World 1416 War the American Distinguished Service Cross, the French Croix de guerre with a gilt star and the purple heart with oak leaf cluster.

Q. What did you serve as in the World War?

A. Lieutenant and Battalion Commander.

Q. Did you receive these marks of honor because of injuries received in the discharge of your duty?

A. The two decorations were for valor; the purple heart was because of two wounds received in action.

Q. At any time were you ever run out of the south, in any case, by any judge, or any other official?

Mr. Stewart: Please allow me the opportunity to object.

The Court: That he was ordered out of the courtroom by some judge.

Mr. Ward: Q. Were you ever ordered out of the courtroom in the south by any judge?

Mr. Stewart: Will you permit me to make an objection?

The Court: Yes.

Mr. Stewart: It is not a question of what the fact is on that. That was a matter of some conversation, and whether the man was ordered out or not is secondary and it is a question incidental in some conversation.

The Court: Objection overruled.

Mr. Stewart: He said he heard he was.

The Court: Mr. Roth said he heard it from the other defendant, Glasser. Glasser he said heard it from somebody whom he relied upon and believed, but he doesn't remember who it was.

That is my recollection of the testimony.

Mr. Stewart: They could still hear it.

The Court: Objection overruled.

Mr. Stewart: Exception.

The Witness: I was never run out of any court.
1417 Mr. Ward: Q. Or ordered out of any court?

A. I was never ordered out of any court.

Mr. Ward: You may cross-examine.

Cross-Examination by Mr. Stewart.

Q. I have your service history. You went in the service on 7/10/26, didn't you?

A. That's correct.

Q. Prohibition agent, twenty-one hundred dollars a year?

A. That is correct, sir.

Q. On 8/1/26 you received a promotion which carried a salary of twenty-four hundred dollars a year?

A. That is correct, sir.

Q. 3/7/27 you resigned?

A. That is correct, sir.

Q. 10—1931 you went back on probational appointment?

A. That is correct.

Q. Then from there on you have some changes and you have been in it since?

A. That is correct.

Q. There was a period from 3/27/27 until 10—1931 that you were out of the service?

A. That is right, sir.

Mr. Stewart: That is all.

The Court: Q. Have you your diary there with you?

A. Yes, sir, I have.

Mr. Ward: I was only putting him back for that particular evidence, your Honor. There are some other matters I would have to ask him about later.

The Court: That is all for now.

(Witness excused.)

1418 CLARENCE E. GENTRY, called as a witness on rebuttal on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

My name is Clarence E. Gentry, I live in Harrisburg, Virginia. I am Clerk of the United States District Court, Western District of Virginia, and have been since Sep-

tember 1932. Previous to that time I was First Assistant United States Attorney for the Western District of Virginia. Judge Paul is now my superior. He sat at Harrisburg, Charlottesville, Lynchburg, Roanoke, Abingdon, Danville, Big Stone Gap. Judge Paul has been Federal Judge there since 1932. As Clerk of the District Court I had occasion to travel with the judge on the circuit, it embraced all those places, holding court, where I have mentioned. As Clerk of the United States District Court I had occasion to be present when various cases and causes would be tried and disposed of. I know Colonel Thomas Bailey, I have known him since 1933. He served with me as an investigator while I was First Assistant United States Attorney.

Q. While you were First Assistant United States Attorney or while you were Clerk of the United States District Court did you ever see or know about the Judge at any time—any judge in the circuit—ordering Mr. Bailey out of his courtroom or out of his district?

A. No such thing ever happened.

Cross-Examination by Mr. Stewart.

I learned by telephone communication from Mr. Ward on Friday of last week for the first time that I was going to be a witness here.

(Witness excused.)

1419. GORDON S. MORGAN, recalled as a witness on behalf of the Government, in rebuttal, having been previously sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

I have within the past week examined the records of the United States Attorney's Office for the purpose of making a summary of the number of cases that were handled in the United States Attorney's Office from the time Mr. Glasser entered the service until he ceased to be in the service. I am able to tell from that examination that there were 4,145 cases in the District Attorney's Office in that time. Mr. Glasser handled of those cases 974.

(Witness excused.)

THOMAS BAILEY, recalled as a witness on behalf of the Government, in rebuttal, having been previously sworn, was examined and testified as follows:

Direct Examination by Mr. Ward.

Q. You are the same Thomas Bailey that has testified here before?

A. Yes, sir.

Q. Now, Mr. Bailey, as a Special Investigator of the Alcohol Tax Unit, there has been some testimony here about Special Agents making daily reports to the Investigator of the Alcohol Tax Unit,—

Mr. Ward: I want to have this marked by the Reporter, with the next number, will you look at these, please, and tell us whether or not—strike it—what are those documents?

A. These are daily reports that are made out by every investigator, and special investigator in the Alcohol 1420 Tax Unit. They set out briefly the activities of the investigator or special investigator for the day.

Q. Are you able to tell the Jury from an examination of these records what special agent was supposed to have made out those?

A. Yes, sir, the signature of the special investigator or the investigator is at the bottom of the report.

Q. Now, look at these two reports, which for the purpose of the record are Thomas Bailey, Special Investigator, and tell us whether those are your reports?

A. These are mine.

Q. Filed in the regular course of business for the Alcohol Tax Unit?

A. Yes, sir.

Q. Now, directing your attention to the date on there, 1/26/38, was that record made by you contemporaneously with the transactions that it indicates?

A. Yes, sir.

Q. And what does that indicate?

A. The report in January 21, 1938 sets out briefly my activity for that day.

Q. Is that the 21st or 26th?

A. January 21st, it sets out.

Q. On January 26th what does your report indicate?

A. Also sets out briefly my activities for that day.

Q. Well, does it indicate you had any conference with the former District United States Attorney?

A. It does.

Q. What does it say?

A. The report says the Special Investigation Case Number 5357-M, that is your number—

Mr. Stewart: Will you pardon the interruption?
1421 For the purpose of the record I feel it is my duty to object, this is an attempt to corroborate this man who has been a witness here on something he wrote out of the presence of any of the defendants.

Mr. Ward: It is not for that purpose at all. The purpose of showing this is to show the accuracy of this report, because we are introducing some reports made out by Agent Smallwood, to the Defendant Glasser, and I want to show the accuracy of the reports, show what they reflect.

The Court: Objection overruled.

The Witness: A. The report shows special investigation 5357-M, that is our number of the Hodorowicz conspiracy report. And goes on further to say, investigation—

Mr. Stewart: I object, if the report is admissible, we can read it as well as the witness can.

Mr. Ward: Q. Was that made out on the same day of that transaction, the same day that transaction occurred?

A. It was made out the following morning.

The Court: It is short, read it. Go ahead and read it.

A. "Investigations in Chicago at Stony Island still, case continued before United States Commissioner until February 16, 1938. Conferred with Assistant United States Attorney Glasser, and with United States Attorney Igoe. He: Above numbered case, used Government car Number 2255."

Mr. Ward: Q. Now, in conjunction with your work did you keep a diary? And do you?

A. Yes, I do.

Q. I will show you a book here, 1938, it is a black book. I will ask you if that is the diary you kept while you were investigator?

A. This is my diary for the year 1938.

Q. And the memorandums in the diary are in your own handwriting?

1422 A. Yes.

Q. And made contemporaneously at the time of the transaction reflected in there?

A. That is correct.

Q. And kept by you in the regular course of your business?

A. As Special Investigator, that is right.

Mr. Ward: Now, we will introduce these reports, if Your Honor please, for the purpose of rebutting some evidence which the defense has offered. We will only refer to that part, Mr. Stewart, which we claim rebuts it.

(Witness excused.)

WILLIAM J. CAMPBELL, called as a witness on rebuttal on behalf of the Government, being first duly sworn, was examined, and testified as follows:

Direct Examination by Mr. Ward.

Q. What is your name?

A. William J. Campbell.

Q. You are the present United States District Attorney for the Northern District of Illinois?

A. I am.

Q. And do you know the Defendant, Daniel D. Glasser?

A. I do.

Q. Do you recall the time—you can answer this yes or no— Do you recall the time when Daniel D. Glasser appeared before the United States Grand Jury and heard evidence and returned the indictment in this case?

A. I do.

Q. At that time did you, preceding Mr. Glasser, enter the Grand Jury Room to testify as a witness, have a conversation with him in which you used the following language?

“Dan, I knew you were going into the Grand Jury Room this morning, and I thought I would go in and put in a good word for you. I want to tell that Grand Jury there was nothing in your official conduct which would require Grand Jury investigation.”

And Mr. Glasser said: “Thank you.”

Did you make that statement?

A. I had a conversation with him—

Q. Did you make that statement?

A. I did not.

Mr. Ward: Cross-examine.

Mr. Stewart: Now, Your Honor, we had this discussion in chambers, and the record doesn't show our talk there, is it Your Honor's ruling that on cross-examination I am limited to what he just stated now?

The Court: That is all.

Mr. Stewart: Because if I am not, I would like to go into other matters to show which is most likely true—

The Court: No, you are limited to it.

Mr. Stewart: If I am so limited, there is no cross-examination.

Mr. Ward: That is all, Mr. Campbell.

(Witness excused.)

(Whereupon documents marked EXHIBITS 217 to 225 inclusive, were offered and received in evidence.)

Thereupon both parties again rested their case.

Thereupon the defendants by their counsels, at the close of all the evidence, entered their respective motions for a directed verdict of not guilty, which motions for a directed verdict of not guilty were, after arguments by counsel, overruled and denied, to which denial of the court the defendants, by their counsels, duly excepted.

The motion of the defendant, Alfred E. Roth, for a directed verdict of not guilty, at the close of all the evidence, being in words and figures as follows:

1424 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division,

At Chicago.

The United States of America }
 vs. } No. 31825.
Daniel D. Glasser, *et al.* }

MOTION OF ALFRED E. ROTH, ONE OF THE DEFENDANTS HEREIN, FOR A DIRECTED VERDICT OF NOT GUILTY OF THE INDICTMENT HEREIN AT THE CLOSE OF ALL THE EVIDENCE.

Now comes Alfred E. Roth, one of the defendants herein, at the close of all the evidence and moves the Court to direct a verdict of not guilty on Count 2 of the indictment herein, on the following grounds:

1. The indictment charges a conspiracy to solicit certain persons to make promises—there is no proof of any solicitation by or on behalf of this defendant or payment of any money to or by or on behalf of this defendant for any unlawful purpose.

2. The Bill of Particulars does not allege the solicitation of or payment to or by this defendant of any money for any purpose and there is no proof of any solicitation of or payment to or by this defendant of any money for any unlawful purpose.

3. There is a fatal variance between the allegations of the indictment and the proof.

4. The evidence is insufficient in law to sustain a conviction.

5. There is no competent evidence in the record to justify submitting the case to the jury.

6. The evidence fails to establish an agreement with this defendant and any other defendant or co-conspirator to commit the offenses charged.

7. There is no evidence of any act of any co-defendant or co-conspirator nor any independent evidence showing this defendant to be a party to the alleged conspiracy.

8. The existence of the alleged conspiracy has not been established.

9. The evidence is consistent with innocence.

Alfred E. Roth.

Thereupon the defendant, Alfred E. Roth, moved to strike and exclude the testimony of Alexander Campbell which motion was joined in by all the defendants and which motion the court overruled and denied upon the objection of the United States Attorney, to which ruling the defendants duly excepted. That the said motion described being in words and figures as follows:

1426 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

MOTION OF ALFRED E. ROTH TO STRIKE AND EXCLUDE THE TESTIMONY OF ALEXANDER CAMPBELL.

Now comes Alfred E. Roth, and moves the Court to strike and exclude from this cause the testimony of Alexander Campbell introduced on behalf of the prosecution on the following grounds:

1. That the conversation testified to by the said Alexander Campbell with the defendant Alfred E. Roth are not declarations made in pursuance of the alleged common object of the alleged conspiracy.

2. That the conversations testified to by the said Alexander Campbell with the defendant Alfred E. Roth is not part of the execution of the alleged plan of the alleged conspiracy.

3. That the fact that the said Alfred E. Roth is indicted and one of the defendants in this cause adds nothing to the competence of the conversations testified to by the said Alexander Campbell.

4. That the fact that the defendant Alfred E. Roth had a conversation as testified to by the said Alexander Campbell where it is claimed that the said Alfred E. Roth told the said Alexander Campbell something allegedly relevant to the alleged conspiracy does not make the conversation testified to competent.

5. That the conversation testified to by Alexander Camp-

bell does not implicate the said Alfred E. Roth in the alleged conspiracy.

6. There is no independent proof connecting the said Alfred E. Roth with the alleged conspiracy.

1427 7. That the testimony of the said Alexander Campbell is concerning a transaction not related to the alleged conspiracy.

8. There is no connection with the alleged conspiracy and the transaction involving the case of United States *vs.* Edward Wroblewski and William Wroblewski in the Northern District of Indiana, concerning which transaction said Alexander Campbell testified.

9. The matter concerning the case of United States *vs.* Edward Wroblewski and William Wroblewski in the Northern District of Indiana concerning which the said Alexander Campbell gave testimony is wholly collateral to the issue in the alleged conspiracy.

10. That as neither guilty knowledge or intent is an issue in this cause the testimony of the said Alexander Campbell is clearly inadmissible.

11. That the testimony of the said Alexander Campbell is highly prejudicial and does not tend to prove any issue in this cause.

12. That the Bill of Particulars setting forth the causes, persons and places involved so that the defendants might be prepared to meet the particulars alleged, does not set forth the case of the United States *vs.* Edward Wroblewski and William Wroblewski in the Northern District of Indiana.

Alfred E. Roth.

Thereupon Mr. McGreal and Mr. Ward, on behalf of the Government, made their closing argument to the court and jury.

Thereupon the respective counsel representing the defendant made their closing arguments to the court and jury.

Thereupon the court charged the jury.

1428 Thereupon at to-wit 3:30 o'clock P. M. on March 7, 1940, the jury retired to deliberate.

Thereafter after continuous deliberation at to-wit, 7:30 o'clock A. M. on March 8th, 1940, the said jury returned a verdict finding the defendants, Daniel D. Glasser, Norton I. Kretske, Anthony J. Horton, Louis Kaplan, and Alfred E. Roth, guilty as charged in the second count of the indictment.

Thereupon the defendants, by their counsels, entered a motion for a finding of not guilty notwithstanding the verdict and a motion for a new trial which were entered and continued to April 22, 1940.

Thereafter on April 22nd, 1940, arguments of counsel on said motions were heard by the court, and taken under advisement, until April 23, 1940.

Thereafter on April 23, 1940, the court overruled the motions of the defendants for findings of not guilty notwithstanding the verdict to which ruling of the court the defendants, by their counsels, duly excepted.

Thereupon the defendant, Daniel D. Glasser, filed his three affidavits in support of his motion for a new trial, and in arrest of judgment, which affidavits are in words and figures as follows:

1429 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

" AFFIDAVIT.

State of Illinois }
County of Cook } ss.

Daniel D. Glasser, being on oath first duly sworn deposes and says that he is a defendant in the case entitled United States versus Daniel D. Glasser, et al., being case No. 31825 of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Affiant further states that one of the principal cases relied on by the Government in the above entitled cause was one implicating the defendant, Louis Kaplan, in connection with the operation of a still by him and Victor Raubunas and others on South Western Avenue in Chicago, Illinois, and referred to at the trial as the Western Avenue still case, a copy of the report in this case was read and given to the jury.

Affiant further states that the complaint of the Government in the Western Avenue still case was that this affiant as Assistant United States Attorney withheld information from the Grand Jury and as a result thereof the defendant Louis Kaplan was no-billed.

Affiant further states that his position at the trial was

that the Government had insufficient proof in law and in fact to present to the Grand Jury on the Western 1430 Avenue still case and that therefore the Grand Jury action was correct.

Affiant further states that on December 15th, 1939, a complaint was requested of the United States Commissioner by the United States Attorney for this District charging the defendant Louis Kaplan with complicity in the operation of the Western Avenue still, which complaint was issued and on which the defendant Kaplan gave bond and which case was continued from time to time thereafter, until subsequent to the trial of this affiant, and then on motion of the United States Attorney dismissed. The Commissioner's file is made part hereof by reference.

Daniel D. Glasser,

Affiant.

Subscribed and sworn to before me this 22nd day of April, A. D. 1940.

Elbert A. Wagner, Jr.,

Notary Public.

1431 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

AFFIDAVIT.

State of Illinois }
County of Cook } ss.

Daniel D. Glasser, being on oath first duly sworn deposes and says that he is a defendant in the case entitled United States versus Daniel E. Glasser, et al., being case No. 31825 of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Affiant further states that one of the witnesses for the Government in the trial of the aforementioned case was Victor Raubunas, a convicted felon, brought from his place of incarceration to testify in said cause, said Victor Raubunas having been convicted in the District Court for the Northern District of Illinois, Eastern Division, on July 19, 1939 and sentenced to the custody of the Attorney General for confinement in a penitentiary for three years.

Affiant further states that said Victor Raubunas subsequent to his conviction and while in custody, gave a state-

ment to the Government on to wit July 27, 1939 in which said statement no mention or reference is made either directly or indirectly to affiant.

Affiant further states on information and belief that after giving said statement the said Victor Raubunas was taken to the penitentiary at Leavenworth, and in approximately five weeks returned to Chicago, interrogated frequently, and finally taken before the September 1939 Grand Jury, which was then investigating the case in which this 1432 affiant was later indicted.

Affiant further states on information and belief that the said Victor Raubunas testified before the said Grand Jury that he had seen this affiant outside the United States Courthouse in Chicago on but two occasions in his life and that both of these occasions were between January 1st and June 1st, 1938, and once on Kedzie and Ogden Avenue in Chicago, and once on Kedzie and Douglas Boulevard in Chicago, at both of which times the witness testified this affiant met the defendant Louis Kaplan, which this affiant states was and is not true. All of which was brought to the attention of affiant after verdict.

Affiant further states that although the said Victor Raubunas testified before the September 1939 Grand Jury and the indictment was returned on September 29, 1939, the witness Victor Raubunas was kept at the county jail in Chicago, Illinois, until subsequent to the giving of a third statement by him on to wit October 20, 1939.

Affiant further states on information and belief that the witness Victor Raubunas was brought from the penitentiary at Leavenworth pursuant to a writ of habeas corpus, ad testificandum, for the purpose of obtaining his testimony before the Grand Jury, and that although the testimony of the said Victor Raubunas was given in one day he, the said Victor Raubunas, was kept at the county jail in Chicago, for forty-four days, and that frequently after testifying before the Grand Jury he was brought to the office of the United States Marshal for this district in the United States Courthouse in Chicago, and there interrogated by Government agents, trying to work up a case against this affiant.

Affiant further states that subsequent to the giving of the third statement by the witness, Victor Raubunas, on to wit October 20, 1939, he, the said Victor Raubunas, was not taken back to the penitentiary at Leavenworth, but was incarcerated at the penal farm at Milan, Michigan,

from where he was brought to testify on the trial 1433 of this affiant.

Affiant further states that on the trial of the cause first above referred to, the said Victor Raubunas testified on to wit February 16, 1940, that he had seen this affiant meet the defendant Louis Kaplan on three occasions, all in 1936, and all at the corner of Kedzie and Douglas Boulevard in Chicago, which this affiant states was and is not true, and all at times when the witness, Victor Raubunas, was engaged in the illicit manufacture of un-taxpaid distilled spirits.

Affiant further states that the testimony of Victor Raubunas was the only testimony offered by the Government which tended to show that this affiant knew the defendant Louis Kaplan.

Affiant further states on information and belief that the testimony of the witnesses on the trial was at variance with the testimony the same witnesses had given before the Grand Jury, to the prejudice of this affiant. All of which comes to this affiant's knowledge after verdict.

Affiant further states that as to those matters herein stated to be on information and belief, he believes are true.

Daniel D. Glasser,

Affiant.

Subscribed and sworn to before me this 22nd day of April, A. D. 1940.

Elbert A. Wagner, Jr.,

Notary Public.

1434 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

AFFIDAVIT.

State of Illinois }
County of Cook } ss.

Daniel D. Glasser, being on oath first duly sworn deposes and says that he is a defendant in the case entitled United States versus Daniel D. Glasser, et al., being case No. 31825 of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Affiant further states that on to wit January 26, 1940 there was summoned by the United States Marshal for said

district for petit jury service 100 persons consisting of 47 females and 53 males, whose names had theretofore been drawn from a box by the jury commissioners of said division and district, which said box was supposed to contain the names of qualified persons indifferently selected, but which box as a matter of fact contained the names of females who were not indifferently selected but on the contrary were selected because the said jury commissioners deemed them possessed of an additional qualification not contemplated by law and which limited the body of citizenship from which jurors could be selected.

Affiant further states that said summons was returnable before the Honorable William H. Holly, one of the judges of said court from which group of persons so summoned the petit jury for the February 1940 term of said court was selected, and from members of which, the petit jury in the above entitled cause was selected.

1435 Affiant further states on information and belief that all the names of the females placed in the box were presented to the clerk of said court, who is one of the jury commissioners, by the Illinois League of Women Voters, which list had previously been prepared by said league of women voters from their membership.

Affiant further states on information and belief that the persons selected by said league for presentation to the clerk aforesaid had previously been required to and did attend jury classes maintained for the purpose of giving instructions to potential jurors.

Affiant further states on information and belief that female persons otherwise qualified and eligible for jury from the box, to the end that no woman could become a service were deliberately and systematically excluded member of the panel or venire unless she was a member of the Illinois League of Women Voters, and had attended jury classes whose lecturers presented the views of the prosecution. It is therefore more than a coincidence that members of the Illinois League of Women Voters were given preference over others.

Affiant further states that the facts above stated to be on information and belief were received by him after reading an article published in the American Bar Association Journal, Volume 26, No. 4—April, 1940, issue, which said article came to the attention of this affiant on or about April 8, 1940, which was subsequent to the verdict in the

aforementioned case, and which article is attached hereto and made part hereof by reference.

Affiant further states that had the facts above stated been known to him or his counsel prior to the selection of the jury in the case above referred to the jurors would have been interrogated along lines which would have shown their prejudice and for which reasons the defense would have exercised challenges for cause.

1436—Affiant further states that because of the above he did not have a trial by a jury free from bias, prejudice and prior instructions, and as a result thereof the said jury was disqualified and this affiant's rights were prejudiced in that he was deprived of a trial by jury guaranteed to him by the laws and constitution of the United States of America, and particularly the 5th and 6th amendments, all of which he offers to prove.

Affiant further states on information and belief that the Illinois League of Women Voters attempted to have the jury commissioners of Cook County, Illinois, place in the box for selection for jury service only the names of those females who had attended the jury classes, and were members of the Illinois League of Women Voters, but which attempt failed, for the reason that the jury commissioners of Cook County deemed such a selection invalid.

Affiant further states that the matters herein stated on information and belief, he believes are true.

Daniel D. Glasser,
Affiant.

Subscribed and sworn to before me this 22nd day of April, A. D. 1940.

Elbert A. Wagner, Jr.,
Notary Public.

1437 ARTICLE OF AMERICAN BAR JOURNAL REFERRED TO IN AFFIDAVIT OF DANIEL D. GLASSER OF APRIL 22, 1940.

Woman and the Law.

Ladies and Gentlemen of the Jury:

These are merely the impressions of one unimportant woman juror who served four weeks on a petit jury in the Federal Court of the Northern District of Illinois. It does not pretend to be an expert discussion of court procedure, and it will have served its purpose if it succeeds in presenting the impressions made on a layman by the administration of justice.

It was February first when I responded with enthusiasm to the summons of the United States Marshal, calling me to serve on the February venire of the petit jury. I had seen the good natured fun poked at the woman jurors by the Chicago Bar Association in its "Christmas Spirits," and had read the numerous stories in the press about juries being "manned" by women. My enthusiasm was composed of an interest in taking a personal part, no matter how small, in the administration of justice, and a sneaking desire to vindicate my sex.

When I arrived in the jury room at the appointed hour I found about seventy-five other people had responded to the same summons. With one exception, the women were all members of the League of Women Voters, who had been recommended by that organization at the invitation of the court. They were all women of education and intelligence, who through their connection with the League had become greatly interested in the problems of government. The men had apparently been chosen at random. There were two chemists, a telephone man, a tavern keeper, several small business men, three laborers, a railroad detective, and others more difficult to classify.

1438

Jury Sworn In.

We all felt very important, and at the same time somewhat humble, when we were sworn in by the whitehaired judge whose name is known and loved by everyone in Chicago. Having taken the oath, the venire was divided.

I went to the court where the Government was to prosecute five defendants for "fixing" bootlegging cases. The court was filled with well-known bootleggers, and other people who, although not so well known, looked like the bootleggers and gangsters of the movies. When my turn came to be examined, I will have to admit that I walked into the jury box somewhat confident and excited. I did not know then, as I do now, how many prospective jurors are excused, especially in criminal cases, for all kinds of reasons. My father is a lawyer and I thought I knew how to conduct myself in court so that I would be accepted at once. I soon found that I was not so smart as I thought I was, for the District Attorney looked me over from head to foot, went into a huddle with his associates, and after a few routine questions, to my great disappointment, excused me!

The next ten days, those of us who had been rejected in this case appeared very promptly and sat around the jury-room most of the day, hopefully at first, impatiently at last. Cases seemed to be continually settled out of court, postponed, or tried by a judge. But we had to come anyhow, to be ready for emergencies. The constitutional right of jury trial, which seemed very fine at first, became very boring at last, as we sat around playing cards, knitting, or talking to the Deputy Marshal. The latter told us that the chief difference between men and women jurors was that the former sat around waiting for something to happen, while the women sat around asking when something was going to happen. For this arduous labor we were all paid \$4.00 per day. The men took 1439 it philosophically, but the women spent a great deal of time trying to think of some way to prevent what seemed to be such a waste of time and money.

A Case at Last.

On the 11th day we were summoned to serve on a damage case. One of the lawyers was very much prejudiced against the League of Women Voters and, before he examined any of us, spent about ten minutes telling the women to forget all they had learned about the duties of jurors. All the information we had, had been given us by members of the Bar Association and distinguished judges, but he seemed to think that the less we knew the better. This

was the first time that this idea had been brought out into the open, but we thought we had noticed it in the rejection of jurors in the case referred to above. After several jurors had been excused, the panel was finally completed. It consisted of six men and six women.

The damage case proved very interesting. It resulted from an automobile accident in which three young girls had been killed, and three others badly injured. The plaintiffs, the defendants, and the witnesses were all typical of the kind that are found in small towns all over this country. Their honesty, sincerity, and self-respect were obvious to all. Their interest and respect for the court were also apparent. This case, like the bootleg case I referred to above, in reality was six cases in one, as is possible under the new rules of civil procedure in the Federal Courts. We found that hearing the six cases at the same time, gave us a much better picture of the whole thing in spite of the fact that there was too much repetition of the same details by the different defense lawyers.

Having seen the take-off of women jurors at the Bar Association, I was very much amused to see that the 1440 lawyers were in reality very conscious of the fact that there were women in the jury box. They showed it in several ways. One of them appeared in a different suit every day with a different collar and a shirt of brilliant hue. We finally got to betting amongst ourselves what we would wear the next day! They all seemed to feel that women knew little of the hard realities of life and the law, and might be swayed by the fact that the plaintiffs were children. I wonder what they would have thought if they had known that when the case finally reached the jury, the women, instead of being influenced by their emotions and feeling sorry for the children, felt that they should all have been spanked!

Trial Tactics.

I was also interested in the clever way in which the different lawyers managed to extract the information they desired from unwilling witnesses, in spite of the objections, often sustained by the judge, and I couldn't help wondering whether jurors were supposed to be made of stone when they were told to disregard certain things. There was continual bickering among the lawyers, alter-

nated with excessive sarcastic politeness towards each other, which seemed to consume a lot of unnecessary time. The men on the jury all looked on this as part of the game, however, but the women did not regard the trial of a case as a sporting event, and were always pleased when the judge called the lawyers to order, as he frequently did.

Another thing that interested me was the attempt to discredit the character of witnesses, and to confuse them, or make them state the accuracy of certain facts, such as the speed of a car, where it was manifestly impossible to do so. In this particular case all of the witnesses, the plaintiffs, and the defendants (most of them children) were of such obvious honesty that attempts to discredit their personal character disgusted the jury. I couldn't help but think it too bad for these young people to be disillusioned by the unfair treatment some of them received and I was very glad when the judge reprimanded one of the lawyers severely. When finally the attorneys summed up the evidence we all felt that there was too much repetition, and that it would have been much better if one of the lawyers for the defense had made the summary for all, as was done for the plaintiffs. As in all such cases there was contradictory evidence, and what seemed contradictory interpretations of evidence. The judge, however, gave us such excellent instructions as to what the law bearing on the case was, that we really felt that this was the most valuable part of the whole proceeding. Finally on the ninth day we got the case and returned our verdict, agreeing to it on the first ballot.

Having done this, again we sat around for ten days, receiving \$4.00 a day for playing bridge, knitting, and talking. A few of us were called to serve on what seemed unimportant cases. The rest of us, after being dismissed for the day, spent as much time as possible visiting other courts in the building. Some of the cases were given a directed verdict by the judge, and should never have been brought into court. This made us wonder whether there could not be some system adopted to settle more cases out of court. We also got to speculating whether there could not be some better system of calling the venires. For example, there was one man on a certain venire who could neither read nor write, and could speak very little English.

Jurors Take "Busman's Holiday".

One day we visited the bootleg case referred to above. Several men now serving terms in prison had testified to having cases "fixed" by the defendants. They were followed on the witness stand by three distinguished judges of the Federal Court, who had known two of the defendants during the time they were accused of accepting bribes. These judges testified that the defendants 1442 were men of good reputation. We wondered just what effect this was supposed to have on the jury, and just what the value of character witnesses was. In this case, did the defense expect anyone to believe that the judges would have known of any such deals made by the accused? In our inexperience it seemed that the defendants certainly would not have divulged any such plans to the judges.

Some of us had visited the municipal courts in Chicago. As we went around to the different courts in the Federal Building we could not help but see the greater prestige and dignity in the latter as compared to the former. The federal judges presided with great dignity and pride over their courts, and were apparently men of legal attainments themselves. To our untrained eyes, they seemed to command a great deal more respect than the judges in the municipal courts, who are nominated by political organizations. We noticed also that in most cases the Federal District Attorney's assistants conducted their cases in a more efficient manner than the State's Attorney's assistants. This in turn seemed to put the lawyers more on their mettle, resulting in better preparation on their part.

Suggestion to Men Lawyers.

When the final day came, and I was handed a voucher for nearly a hundred dollars, I felt a decided let-down. Life would seem very tame for awhile, but I knew that my real richness was not in the money I received, but in the broadening of my experience and point of view. I had only one regret. I wished lawyers would treat women jurors as human beings. They seemed to think that our point of view and our way of thinking was peculiar to our sex. In reality our ideas are determined by our experience, and on the whole do not differ very much from those

of men. We are no better and no worse, and we prefer to be judged on our merits rather than our sex.

L. T. S.

1443 Thereupon the defendant, Alfred E. Roth, filed his two affidavits in support of his motion for a new trial, and in arrest of judgment, which affidavits are in words and figures as follows:

1444 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

AFFIDAVIT OF ALFRED E. ROTH.

State of Illinois }
County of Cook } ss.

Alfred E. Roth being first duly sworn upon his oath, deposes and says that on or about April 10, 1940, he had a conversation with Daniel D. Glasser, at which time the said Daniel D. Glasser, informed this affiant that the female jurors impanelled to try the case of the United States *vs.* Daniel D. Glasser, et al., were selected from a list made up by the Illinois Women Voters League to the exclusion of all other females; that this was the first knowledge he had that the female jurors that were impanelled to try the case of the United States *vs.* Daniel D. Glasser, et al., were selected from the said list to the exclusion of all other females; that based upon the statements made to him by the said Daniel D. Glasser, as set forth in the affidavit of Daniel D. Glasser, filed in this cause this affiant was deprived of a trial by jury, as guaranteed by the laws and the constituted of the United States.

Alfred E. Roth.

Subscribed and sworn to before me this 22nd day of April, A. D. 1940.

Albert Healy Werner,
Notary Public.

1445 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

AFFIDAVIT OF ALFRED E. ROTH IN SUPPORT OF
MOTION FOR A NEW TRIAL.State of Illinois }
County of Cook } ss.

Alfred E. Roth, being first duly sworn upon oath, deposes and says that he is one of the defendants in the above cause, that on the day the said cause was submitted to the jury, court convened at 9:00 O'clock A. M., that the said cause was submitted to the jury for consideration at about 3:30 O'clock P. M., and that they deliberated continuously throughout the night until the following morning at about 7:30 O'clock A. M. when they returned their verdict, and that during their deliberations the bailiff in charge of the jury entered the jury room on a number of occasions, and this affiant is uninformed as to the reasons therefore, and what took place therein.

Affiant further states that he was informed by a male member of the jury that he did not hear all the instructions and along about midnight the said juror heard one of the jurors ask for instructions while the bailiff was in the jury room talking to the foreman, and that the bailiff waved the said juror down with his hand, that the said juror also stated to this affiant that he was sick and vomiting and lying on the floor on his overcoat and was exhausted, that he had arisen at the hour of 5:30 A. M. O'clock at his home in Lake Zurich, to be able to report at Court at 9:00 A. M. on the day the jury received the case to deliberate, and that he requested that he be able to retire for the night while the bailiff was in the jury room along about midnight, and that his request was denied, and that he further stated that he and several male jurors conversed between themselves and stated that the Government would not indict the defendants and go to that expense if they did not do something, all of which he stated he is ready and willing to testify to in Court, and that another male juror stated to this affiant that he did not hear all the instructions and particularly did not hear an instruction to the effect that where all the evi-

dence is susceptible of two inferences, one of innocence and one of guilt the jury must adopt the innocent inference.

Alfred E. Roth,

Affiant.

Subscribed and sworn to before me this 23rd day of April, A. D. 1940.

Albert Healy Werner,

Notary Public.

1446 Thereupon the defendants filed the following motion in arrest of judgment:

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—31825) * *

MOTION OF ALL THE DEFENDANTS HEREIN,
JOINTLY AND SEVERALLY TO ARREST THE
JUDGMENT HEREIN.

Now come the defendants, Daniel D. Glasser, Norton I. Kretske, Anthony Horton, Louis Kaplan, and Alfred E. Roth, jointly and severally and move the court to arrest the judgment on the second count of the indictment herein for reasons as follows, separately and severally considered:

1. That the second count of said indictment does not sufficiently state an offense against the United States under the laws and constitution of the United States.

2. That there is a fatal variance between the allegations of the indictment and the proof.

Daniel D. Glasser,
Norton I. Kretske,
Anthony Horton,
Louis Kaplan,
Alfred E. Roth.

1447 Thereupon on to-wit, April 23, 1940, the court overruled and denied the motions of the defendants for a new trial.

Thereupon on to-wit, April 23, 1940, the court overruled and denied the motions of the defendants in arrest of judgment.

To which denial of the motion for a new trial and the denial of the motion in arrest of judgment the defendants, by their counsel, duly excepted.

Thereupon the defendant, Anthony J. Horton, was sentenced to the custody of the Attorney General to be confined in a penitentiary for a period of one year and one day, said sentence being suspended and the defendant Horton being placed on probation for a period of two years.

Thereupon the defendant, Alfred E. Roth, was sentenced to pay a fine of \$500.00.

Thereupon the defendant, Louis Kaplan, was sentenced to the custody of the Attorney General for confinement in a penitentiary for fourteen months.

Thereupon the following proceedings took place:

1448 The Court: Now, Kretske, Glasser and Kaplan.

Mr. Kretske: I have nothing to say except I am innocent. I have never been in conspiracy with Mr. Glasser. Never asked him to do anything; never gave him anything. I only had a few cases with Mr. Roth. That's the extent of my interest in this matter.

The Court: What explanation have you to offer for the \$3500 for this fellow Nick Abosketus?

Mr. Kretske: The first time I heard this was on the witness stand, believe me.

The Court: I recall very clearly that this Brantman took the stand, and I gave the defense from Friday until Monday to check up on this matter and you wanted them to cross-examine. He came here and on direct examination you testified that . . . was—you didn't know much of him except that he was a fixer of the Capone syndicate and others.

Mr. Kretske: I had learned that since.

The Court: And then on cross-examination you had to admit that you were rather closely allied with that man.

Mr. Kretske: Oh, no, Your Honor.

The Court: Had him appointed as auditor.

Mr. Kretske: No. I recommended him.

The Court: What is that?

Mr. Kretske: Recommended him.

The Court: Any lawyer of honor or standing who has any regard for his obligations, you recommended a
1449 man that you believed—

Mr. Kretske: I didn't know that at that time. That was over a year and a half ago, Your Honor. And

as far as cross-examination, Mr. Stewart conferred about it and he seemed to think that Mr. Abusketus straightened that matter out entirely to the court's satisfaction, and the jury's satisfaction.

1450 The Court: Anything you want to say, Mr. Glasser?

Mr. Glasser: Your Honor has asked Mr. Kretske what he has to say about three thousand dollars.

The Court: Thirty-five hundred.

Mr. Glasser: Or thirty-five hundred. I read over Abusketus' testimony and Mr. Brantman's testimony. Your Honor will remember Brantman said he didn't know me and Abusketus didn't know me and one thing more. Your Honor may remember that Bailey testified that somebody out at the County Jail told us that Nick Abusketus rented that farm or told him to rent it and Your Honor may remember when I was on the stand and I kept saying I don't remember that, if Bailey will show me his report or if you will show me Bailey's report it might refresh my recollection. I had a reason to ask that because I couldn't remember and I knew as Your Honor said, if anybody had said at the County Jail that Abusketus had rented that farm Bailey would have gone to his office and made such a report and he would show me that report. The only thing they showed me was Bailey's little diary which said, "Went to the County Jail with Glasser to-day". If Your Honor has any questions you want to ask me about any particular case I would be glad to answer them.

The Court: Yes, I will.

Mr. Glasser: I will appreciate it.

Mr. Stewart: I didn't believe Brantman because
1451 I feel, I felt Brantman was put in the middle himself.

Mr. Ward used a great big transcript. They had that man in custody and if there is any reflection to be cast upon—against Kretske because I didn't cross-examine him I want to tell Your Honor the reason. You see, Your Honor did what Federal Judges have the power to do and you cross-examined him. To use an expression we use, very expressive, he was so much in the middle, he feared the Government and he knew what they wanted and he went on there. I was about to cross-examine. He was in the jurisdiction of the court. He could have said to anybody anything, you know. I thought it was better to leave him alone but if there is one thing you would like to have—

The Court: I think you used good judgment when you didn't cross-examine him.

Mr. Stewart: Yes and the reason I did, I don't want that to reflect on the client.

The Court: I understand.

Mr. Stewart: It was not because I was afraid I couldn't show he was lying. I was afraid he would be telling worse lies and it would be worse as far as he is concerned if my client rested on him. I think Your Honor will agree with me that's a racket around here. They get moneys up on futures. Somebody might have some money up to get Horton on probation and something like that, that's a racket. That's all that was.

The Court: He made a trip to Milwaukee?

A. Yes, sir.

1452 The Court: What business did you have going to Milwaukee?

Mr. Glasser: Judge Igoe—

The Court: To serve a process of this court?

Mr. Glasser: Yes, I did.

The Court: Are you a deputy marshal?

Mr. Glasser: Your Honor took exception to what I stated on the stand. I went up there on the order of my superior, Judge Igoe so testified he sent me up there. If you will look at the transcript you will find it. That's the first thing. I was sent up there.

The Court: What could you accomplish that the United States Marshal could not accomplish?

Mr. Glasser: Here is what I could accomplish. Your Honor does not evidently understand the way these things happen.

The Court: I think I can. Go ahead.

A. Let me explain it because when I was on the stand you said to me, do you think the United States Marshal was crooked? No, I don't. I didn't know nothing about it but I did know about Barney Cloonan. I had been hearing,—don't ask me where I had been hearing—because I can't tell you, but all of the time I had been hearing of it. We called Barney Cloonan from Judge Igoe's office. We said, how about this particular old man, Kansensbach, and it has since come to my attention that a file in my office will show a letter to the United States Attorney in Milwaukee which says, we are enclosing a returned bench warrant which we are handing to Cloonan and Cloonan 1453 was supposed to take it to the Marshal in Milwaukee.

We waited for weeks and for a long time—

The Court: Who is Cloonan?

Mr. Glasser: A special investigator for the Alcohol Tax office.

The Court: Why couldn't you mail it?

Mr. Glasser: They did it in all the other cases here. The Alcohol Tax agent as soon as the indictment is returned goes out and locates the defendant. That's the way they do it all of the time. Cloonan says, give me the warrant. I'll take it to Milwaukee. I'll go to Waupan with the Marshal because I know the fellow, Kansensbach, and I'll bring it in. Take it in. Why should we trust him? Just as you say the Judges trusted me. We gave it to him and we waited and waited and he never showed up and we had been hearing rumors about Cloonan and Abusketus and Judge Igoe called me in and said, you go to Milwaukee. He testified to that from the stand. If Your Honor thinks there was anything crooked it was not on my part and I can assure you not on Judge Igoe's part.

The Court: The record is full of testimony you would not deliver the evidence to the grand jury.

Mr. Glasser: I think one thing is very important for

Your Honor to know and that's the Western Avenue 1454 case. You remember Frank Campbell got on the stand and wanted to say what Frank Hill said and you sustained the objection and they read the report to the jury. In the Western Avenue case the grand jury rightly and truly no billed Kaplan. How did I prove it? I proved it by the thing I filed yesterday.

The Court: What is the name of the man you tried to make out was non compos mentis?

Mr. Glasser: Joe Cole.

The Court: You took him to the grand jury and took him out.

Mr. Glasser: That's right.

The Court: That man was up here on the witness stand and there was nothing in the testimony to indicate that to me.

Mr. Glasser: If Your Honor wants to base your sentence on that and that only—

The Court: Well, that's one—

Mr. Glasser: If Your Honor will say, "Glasser, I'll base my sentence on that case, on the question whether that man is non compos mentis" I'll take that chance and take the supreme penalty.

The Court: I saw that man on the stand.

Mr. Glasser: You know the man—he is now suffering—

The Court: That's only one of the items. You withheld testimony from that grand jury that resulted in the indictment of these men that were later indicted and were convicted.

1455 Mr. Glasser: Nobody was ever indicted and convicted that I no billed.

The Court: There were men here who should have been prosecuted.

Mr. Glasser: Nobody was indicted and convicted that I no billed. I had the outstanding record in the United States. There were eighteen assistants in the office of the United States Attorney here and that little contemptible liar, Morgan, testified I disposed of 907 out of 4100. I disposed of 25% of the work of the office.

The Court: Why do you refer to him as a contemptible liar?

Mr. Glasser: Because he is a contemptible liar. He said I recommended Ekstone which proved nothing, had no probative value, but one of the newspaper men wanted to show that—

The Court: How do you approve your personnel record?

Mr. Glasser: How do I approve my personnel record? A month before I left the office, not as one of the papers said in order to get a job, a month before I left the office our new United States Attorney sent through this thing. February of 1939 and I was requested—I had my request to resign in March. He sent through this business of a personnel record. When I got it I gave it to Miss McGarry.

The Court: What you gave Miss McGarry she wrote out on the typewriter exactly as you gave it to her.

Mr. Glasser: Do you think I would say to her LLD?

The Court: This—that woman has been in this 1456 service how many years? 35 years. Don't try and stand before the court and try to put a blemish on that fine immaculate woman. That doesn't help you any.

Mr. Glasser: I would not do that.

Mr. Stewart: We all make mistakes.

Mr. Glasser: What about that? That's not an academic degree—

The Court: That contained that item how many years you attended various universities.

Mr. Glasser: I don't think so.

Mr. McGreal: That exhibit stated Mr. Glasser attended Loyola University from 1922 to 1925.

Mr. Glasser: As a matter of fact, I attended for a year or a year—

The Court: I asked you how long did you attend the university.

Mr. Glasser: A year or a year and a half, I don't remember.

The Court: What other university did you attend?

Mr. Glasser: DePaul.

The Court: How long were you there?

Mr. Glasser: I was there I think about a year.

The Court: I asked you on the witness stand and you said you studied in some law office.

Mr. Glasser: That's right.

The Court: I asked you the name of the lawyer and you couldn't remember.

1457 Mr. Glasser: I still can't remember it.

The Court: Any man who would give me an opportunity to study law in his office, I don't think I would ever forget that.

Mr. Glasser: I know the man very well.

The Court: No need of discussing of this matter. I am satisfied without any question of your guilt.

Mr. Glasser: Are you satisfied I took any money in this case, Judge?

The Court: Yes, I am.

Mr. Glasser: That's very fine, because the Government said—

The Court: I am satisfied that you did.

Mr. Glasser: Fine.

Mr. Stewart: You are not admitting it, are you?

Mr. Glasser: Not at all, not at all.

Mr. Stewart: All right.

Mr. Glasser: I say I am not guilty.

The Court: I am satisfied.

1458 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

• • (Caption—31825) • •

STIPULATION AS TO EXHIBITS.

It Is Hereby Stipulated and Agreed by and between the parties hereto that all the original physical exhibits introduced on behalf of the United States, and all the original physical exhibits introduced on behalf of all the defendants on the trial of the above cause, be and the same are hereby ordered, certified and sent by the Clerk of this Court to the Circuit Court of Appeals for the Seventh Circuit.

It Is Hereby Further Stipulated and Agreed that the said exhibits be and the same are by reference incorporated in and made a part of the bill of exceptions in said cause.

It Is Further Stipulated and Agreed that the originals of any or all of the exhibits in this case whether reproduced in or omitted from the Record, may be produced upon the argument of this appeal, and may be referred to by the parties hereto upon the argument and in their briefs, with the same force and effect as though printed in full in the Transcript of the Record.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth.

1459

William J. Campbell, (M.U.)

*United States Attorney for the North-
ern District of Illinois, Attorney for
the United States.*

1460 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

STIPULATION.

It Is Hereby Stipulated by and between the parties hereto, that the defendants use page references in lieu of quotations of full substance of evidence admitted or rejected in the preparation of Assignment of Errors.

It Is Hereby Further Stipulated, that in preparing the Assignment of Errors in this cause, the page references used, in lieu of quotations of the full substance of evidence admitted or rejected, be by page reference to the printed transcript of record; that the original Assignment of Errors filed in this cause may be filed without such page references being incorporated therein and that such page references may be added to the Assignment of Errors when a page proof of the transcript of record is available from the printer.

Dated this 19th day of June, A. D. 1940.

William J. Campbell,
United States Attorney.
Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Defendants.

1461 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—31825) • •

ORDER.

Pursuant to Stipulation entered into by and between the United States of America, plaintiff, and Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth, defendants;

It Is Hereby Ordered that the defendants use page references in lieu of quotations of full substance of evidence admitted or rejected in the preparation of Assignment of Errors.

It Is Hereby Further Ordered that in preparing the

Bill of Exceptions.

Assignment of Errors in this cause, the page references used, in lieu of quotations of the full substance of evidence admitted or rejected, be by page reference to the printed transcript of record; that the original Assignment of Errors filed in this cause may be filed without such page references being incorporated therein and that such page references may be added to the Assignment of Errors when a page proof of the transcript of record is available from the printer.

Dated this 27th day of June, A. D. 1940.

Enter:

Patrick D. Stone,
Judge.

1462 Thereupon the court sentenced the defendant, Daniel D. Glasser, to be committed to the Attorney General for confinement in the penitentiary for fourteen months.

Thereupon the court sentenced the defendant, Norton I. Kretske, to be committed to the Attorney General for confinement in the penitentiary for fourteen months.

Which is all the evidence offered and received and all the proceedings had on the trial of the above entitled cause.

Now, in furtherance of justice, and that right be done, the defendants, Daniel D. Glasser, Norton I. Kretske, and Alfred E. Roth, present this, their Bill of Exceptions, and pray that the same may be settled, allowed, and certified by the court and made a part of the record in this cause, as provided by law.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Defendants.

Approved:

William J. Campbell,
United States Attorney.
Martin Ward,
Asst. U. S. Atty.

1463 JUDGE'S CERTIFICATE TO BILL OF
EXCEPTIONS.

I, the undersigned United States District Judge, do hereby certify that the foregoing Bill of Exceptions contains all the material facts, matters, things, proceedings, rulings, and exceptions thereto occurring upon the trial of said cause, and not heretofore a part of the record herein, including all evidence adduced at the said trial, and I hereby settle and allow the foregoing Bill of Exceptions as a full, true and correct Bill of Exceptions in this cause, and order the same filed as part of the record herein, and further order the Clerk of this court to transmit the said entire Bill of Exceptions to the Circuit Court of Appeals for the Seventh Circuit.

I hereby certify that where the evidence in the Bill of Exceptions consists of questions and answers, the same are necessary to clearer and fuller understanding of the questions to which they relate and a proper understanding of the questions presented.

Patrick D. Stone,
United States District Judge.

Dated this 27th day of June, 1940.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States
OCTOBER TERM, 1941

No. 30

DANIEL D. GLASSER, PETITIONER,
vs.
THE UNITED STATES OF AMERICA

No. 31

NORTON I. KRETSKE, PETITIONER,
vs.
THE UNITED STATES OF AMERICA

No. 32

ALFRED E. ROTH, PETITIONER,
vs.
THE UNITED STATES OF AMERICA

WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 28, 1941.

CERTIORARI GRANTED APRIL 7, 1941.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. _____

DANIEL D. GLASSER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No. _____

NORTON I. KRETSKE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

No. _____

ALFRED E. ROTH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.



INDEX.

Index to printed record of proceedings in U. S. District Court	i
Clerk's certificate to printed record (without bill of exceptions)	138a
Clerk's certificate to volume I of bill of exceptions....	622a
Clerk's certificate to volume II of bill of exceptions...	1071
Index to proceedings in U. S. Circuit Court of Appeals:	
Placita	1073
Order of July 10, 1940, consolidating causes, etc....	1074
Certificate of Hoyt King, Clerk, U. S. District Court, to exhibits.....	1075
Supplemental certificate of Hoyt King, Clerk, U. S. District Court to exhibits.....	1093
Petition for order on U. S. Attorney to produce missing exhibits	1094
Answer to petition for order on U. S. Attorney to produce missing exhibits.....	1096
Reply to answer of U. S. Attorney for order to produce missing exhibits.....	1097
Additional answer of U. S. Attorney.....	1100
Order of Aug. 14, 1940, directing U. S. Attorney to transmit exhibits to U. S. Circuit Court of Appeals	1102
Additional assignment of error, filed in cause No. 7315	1103
Additional assignment of error, filed in cause No. 7316	1104
Additional assignment of error, filed in cause No. 7317	1105
Motion by U. S. Attorney to suppress brief of appellant Glasser	1105
Points and authorities in support of motion.....	1106

Affidavit of Francis J. McGreal.....	1108
Memorandum in support of answer to motion to suppress brief of appellant Glasser.....	1112
Order of Sept. 13, 1940, denying motion to sup- press brief of appellant Glasser.....	1116
Opinion by Kerner, J., filed Dec. 13, 1940.....	1117
Judgment as to appellant Glasser, affirming, en- tered Dec. 13, 1940.....	1139
Judgment as to appellant Kretske, affirming, en- tered Dec. 13, 1940.....	1140
Judgment as to appellant Roth, affirming, entered Dec. 13, 1940.....	1140
Petition for rehearing in cause No. 7315, filed Dec. 24, 1940	1141
Petition for rehearing in cause No. 7316, filed Dec. 24, 1940	1181
Petition for rehearing in cause No. 7317, filed Dec. 24, 1940	1189
Answer to appellants' petitions for a rehearing, filed Dec. 31, 1940.....	1211
Brief of Amicus Curiae, filed Jan. 4, 1941.....	1219
Memorandum in support of petition for rehearing of appellant Glasser, filed Jan. 7, 1941.....	1231
Orders denying petitions for rehearing, entered Jan. 23, 1941.....	1239
Præcipe for record on certiorari.....	1240
Clerk's certificate	1243
Verdict of jury filed March 8, 1940.....	1244
Orders allowing certiorari.....	1245

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

7315 United States of America,
 Plaintiff-Appellee,
 vs.
 Daniel D. Glasser,
 Defendant-Appellant.

7316 United States of America,
 Plaintiff-Appellee,
 vs.
 Norton I. Kretske,
 Defendant-Appellant.

7317 United States of America,
 Plaintiff-Appellee,
 vs.
 Alfred E. Roth,
 Defendant-Appellant.

} Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

And, to-wit: On the tenth day of July, 1940, in causes Nos. 7315, 7316 and 7317, the following further proceedings were had and entered of record, to-wit:

Wednesday, July 10, 1940.

Court met pursuant to adjournment.

Before:

Hon. Walter E. Treanor, Circuit Judge.

7315 United States of America,
 Plaintiff-Appellee,
 vs.
 Daniel D. Glasser,
 Defendant-Appellant.

7316 United States of America,
 Plaintiff-Appellee,
 vs.
 Norton I. Kretske,
 Defendant-Appellant.

7317 United States of America,
 Plaintiff-Appellee,
 vs.
 Alfred E. Roth,
 Defendant-Appellant.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

On motion of defendants-appellants, it is ordered that these appeals be consolidated for the purpose of having one transcript of record for all appeals.

Upon petition of defendants-appellants, it is further ordered that this cause be heard upon the printed record papers filed and proceedings entered in the District Court and the typewritten transcript of evidence.

It is further ordered that the motion to eliminate portions of the District Court Clerk's record be, and the same is hereby, granted.

And afterwards: to-wit: On the second day of August, 1940, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court a certificate, to exhibits, which said certificate to exhibits is in the words and figures following, to-wit:

Northern District of Illinois, } ss.
Eastern Division.

Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit certain original Exhibits in the case entitled: United States of America *vs.* Daniel D. Glasser, *et al.*, D. C. 31825, said Exhibits are marked as follows, to-wit:

Received of William J. Campbell, United States District Attorney, the following exhibits which were introduced in the case of United States *vs.* Daniel D. Glasser, *et al.*, in the District Court of the United States of America in Northern District of Illinois, Eastern Division:

Exhibit No. Description.

- 1 June 1935—Grand Jury Minutes.
- 2 File in case of U. S. *vs.* Workman, D. C. No. 29092, containing correspondence, seizure list, statements of various witnesses pertaining to Continental Warehouse Co., 973 W. Cullerton St., Chicago, Ill.
- 3A-G incl. Originals of letters from U. S. Atty.'s office, Chicago to Atty. Gen., Wash., D. C., in regard to discharge of certain defendants in Workman.
- 4 Closed case docket, U. S. Attorney's Office, D. C. cases No. 28800 to 29299.
- 5 Indictment returned June, 1935 *vs.* Wm. J. Workman, L. R. Clavenger, *et al.*, D. C. No. 29092, charging possession of illicit alcohol still at 973 Cullerton St., Chicago, Ills. (7 counts).
- 6 April 1937 Grand Jury List containing list of 26 indictments and no bills returned.
- 7 Photo of building at 973 W. Cullerton St., Chicago, Morgan & Cullerton Streets, S. E. view.
- 8 Photo of interior of same, showing tanks, 5th floor, north of still.
- 9 Photo of interior of same showing boiler, 6th floor, east of condensers.

Exhibit No.	Description.
10	Photo of interior of same showing tank, 6th floor, N. W. corner, together with steel drums.
11	Photo of interior of same showing condensers, S. W. corner, 6th floor.
12	Photo of interior of same showing mash vats, 6th floor, N. E., and along east wall.
13	Photo of interior of same, mash vats, 5th floor, N. E. corner.
14	Photo of interior of same showing blower system and vat on 6th floor, S. E. corner.
15	Photo of interior of same showing blowers, 5th floor, east of still columns.
16	Photo of interior of same showing elevators, dismantled condenser and 2 dismantled boilers (no legend on picture).
17	Photo of interior of same showing still columns and an engineer's post, 5th floor, S. W. corner.
18	Photo of interior of same showing still columns on 5th floor, S. W. corner.
19	Photo of Steve Schiavone (apparently Alcohol Tax Unit official photo).
20	Photo of interior of building at 973 West Cullerton St., Chicago, showing chart, 5th floor, near south wall, S. E. corner of room.
21	Photo of building showing used boiler plate and timber piers.
22	Photo of interior of building showing metal boxes, planks of various sizes and general debris.
23	Photo of interior of building; view of used boiler plate.
24	Photo of interior of 973 West Cullerton St., Chicago, showing alcohol rack, near S. E. section, 4th floor.
25	Photo of interior of building showing used boiler plate.
26	Photo of interior of building showing used boiler plate.
27	Photo of interior of building showing used boiler plate.

Exhibit No.	Description.
28	Photo of interior of building showing used boiler or still plates.
29	Photo of interior of building showing general debris.
30	Copy of Exhibit 24.
31	Photo of interior of building showing punctured steel drums.
32	Photo of interior of building showing debris in the nature of lumber, pasteboard packing boxes and white cakes.
33	Photo of interior of building showing used lumber.
34	Photo of interior of 973 Cullerton St., Chicago, showing still base, S. W. corner, and 4th floor stairs to 5th floor.
35	Indictment April, 1935, U. S. <i>vs.</i> Wm. J. Workman, Bernard Hanse Stephensen and others, D. C. No. 28870, charging defendants carried on business of rectifier without paying tax at 973 Cullerton, Chicago (9 counts).
37	Report of Internal Revenue Service, Alcohol Tax Unit, dated December 31, 1937, in regard violation of I. R. L. laws by Clemens W. Dowiat and Anthony Hodorowicz, concerning premises at 6949 Stony Island Ave., Chicago, Illinois; report contains seizure list, statements of witnesses signed by name, and chemist's report.
5	
38	Pencil sketch of vicinity of 70th to 69th Streets on Stony Island Ave., Chicago, Illinois.
39	Photo of front of 120-124 E. 118th Place, showing house, gate and store.
40	Photo of front of 120-124 E. 118th Place, showing gate and store.
41	Photo showing rear of 120-124 E. 118th Place; interior view of three-section metal container.
42	Photo, rear same address, showing building entrance.
43	Photo, rear, same address, 120-124 E. 118th Place, showing steam boiler.

Exhibit No.	Description.
44	Photo, rear, same address, 120-124 E. 118th Place, showing pipe connection in hole in pavement.
45	Photo, rear of same, showing alley.
46	Photo, rear of same, showing wooden wall with hole in same leading to hole in concrete wall.
47	Photo, rear of same, showing alcohol dispensing tank.
48	Photo, rear of same, showing condensor (cut in two).
49	Photo, rear of same, showing smashed condensor, punctured 5 gallon cans and larger cans.
50	Photo, rear of same, showing exit to street.
51	Photo, rear of same, showing cans and vats.
52	Petition for Probation of Frank and Peter Hodorowicz and Clem Dowiat, United States <i>vs.</i> Hodorowicz, <i>et al.</i> , D. C. No. 31014.
53	Order by Judge Woodward granting leave to file the aforesaid Petition for Probation and staying mandate.
54	"Petition of defendants to suppress evidence heretofore obtained on unlawful search and seizure". United States <i>vs.</i> Peter Hodorowicz (3 pages). (Copy.)
55	Indictment—U. S. <i>vs.</i> Clemens W. Dowiat and others, D. C. No. 30794, charging possession of a still (3 counts).
56	Photo, rear of 120-124 E. 118th Place, showing lead pipe with two-section metal cooker.
57	Photo, rear of same, view showing general collection of pipe, apparatus, tin wash boiler, 5 gallon can.
58	File No. 19574 of Commissioner showing notations of preliminary examination before Com'r Walker, together with recognizance of bail.
59	Commissioner File No. 19572, search warrant and affidavits for premises at 128-30 East 118th Pl., Chicago, Illinois.
60	Commissioner File No. 19077, containing complaint <i>vs.</i> Walter Hort.

Exhibit No.	Description.
61	Commissioner File No. 19076, containing complaint <i>vs.</i> Peter Hodorowicz.
62	Commissioner File No. 19087, containing complaint <i>vs.</i> Michael Hodorowicz and Walter Hort.
63	Commissioner File No. 19427, containing complaint <i>vs.</i> Clem Dcwiat.
64	Commissioner File No. 20478, complaint and recognizance of bail of Walter Kwiatowski.
65	Commissioner File No. 19893, pertaining to Carl Swanson.
66	Commissioner File No. 19888, pertaining to Anthony Hodorowicz and Clemens Dowiat, complaint and recognizance of bail.
67	Commissioner File No. 20642, complaint <i>vs.</i> Walter Buchaniec, Pete Mackiewicz, Joseph Netko, Herman David and Richard Clement.
68	Commissioner File No. 18978, complaint <i>vs.</i> Stanley Wisniewski, Chester Wisniewski (with aliases), and Ralph Sharp.
70	Envelope containing Kretske's business card.
71	Photo showing mash vat after destruction, 7915 Saginaw Ave., Chicago, Ill.
72	Photo showing rear of premises 7915 Saginaw Ave., Chicago, Ill.
73	Photo showing stili and mash vat, 7915 Saginaw Ave.
75	Photostatic copy of Bank Statement, South Chicago Savings Bank of Walter Kwiatowski, No. 74437, June 8, 1938 to January 1, 1940, inclusive.
76	Photostatic copy of Bank Statement, South Chicago Savings Bank of Walter Kwiatowski, account No. 74437, from February 16, 1931 to April 28, 1938, inclusive.
77	Photostatic copy of Bank Savings Withdrawal Receipt, (So. Chicago Savings Bank), signed by Walter Kwiatowski, in the amount of \$700.00.
78	Photostatic copy of Withdrawal Receipt, South Chicago Savings Bank, in the amount of \$3,750, signed by Walter Kwiatowski.

Exhibit No.	Description.
79	Photo of Vitale seizure taken in sheriff's office.
80	Photo of Vitale seizure taken in sheriff's office.
81	Photo of Vitale seizure taken in sheriff's office.
81A	Report of Internal Revenue Service, Alcohol Tax Unit, dated July 14, 1937, case 4570-M, pertaining to Victor Raubunas, Louis Kaplan, Adam Widzes, <i>et al.</i> , concerning premises at 2524-34 South Western Ave., Chicago, Illinois, with seizure list, together with statements of witnesses.
82	Photo showing Douglas Blvd. and Kedzie Ave. looking N. E.
83	Photo showing Kedzie Ave. and North Drive on Douglas Blvd., showing Joseph Mirsky's Delicatessen, 3160 W. Douglas Blvd.
84	Statement of Victor Raubunas, dated July 27, 1939 (3 pages).
85	Photos of intersection of Kedzie and Douglas.
86	Same.
87	Same.
88	Same.
89	Same.
90	Photo, view through glass front of Kaufman's Delicatessen at Douglas and Kedzie.
91	Photo of news stand at Douglas and Kedzie.
93	July 1937 Grand Jury List together with notations of 85 true bills and no bills and various memoranda.
94	October 1937 Grand Jury List with memoranda of 88 true bills or no bills and other notations.
95	Grand Jury Minutes—May 1938 List.
96	Transcript of testimony taken before Grand Jury May 17, 1938, case of U. S. <i>vs.</i> Louis Kaplan, <i>et al.</i> (50 pages).
97	Photo, exterior view distillery building, Spring Grove, Ill.
98	Photo, equipment, second floor of same.
99	Photo, vat on second floor of same.

Exhibit No.	Description
100	Photo, vat, second floor of same.
101	Photo, vat, second floor of same.
102	Photo, vat, second floor of same.
103	Photo, equipment, first floor of same.
104	Photo, exterior view of distillery building showing smoke stack (rear).
105	Photo, exterior view across railroad tracks of distillery building.
106	Photo, vat, second floor of same.
107	Photo, rear side distillery building, Spring Grove, Ill.
108	Photo—boiler, first floor, Spring Grove distillery.
109	Photo—vat and equipment, same.
110	Photo, exterior distillery building, showing mill pond.
111	Photo, equipment, first floor, distillery building.
112	Photo, vats, second floor, distillery building.
113	Report of Internal Revenue Service, Alcohol Tax Unit, Chicago, Illinois, dated July 2, 1937, their own case No. 4957-M, concerning violation of internal revenue laws by carrying on business of a distiller, by possession and control of a still, etc. at Spring Grove, Illinois, by Louis Kaplan, Victor Raubanas, Edward R. Dewes, Stanley Slesuraitis, Joseph F. Cole, Louis Pregonzer, Lincoln Rankin, Ralph Bogush, Joe Fernandez and Ceil Simms, containing narrative history of evidence, seizure, statements of witnesses, chemist's report, with finger print reports of Louis Kaplan, Lincoln Rankin and Louis Pregonzer.
114	Statement of Edward R. Dewes to W. S. Devereaux, Special Agent F. B. I., dated July 27, 1939, re payments to Norton Kretske in connection with both "Arlington Heights" and "Spring Grove", containing five pages.
115	Statement of Edward R. Dewes to W. S. Devereaux, Special Agent F. B. I., dated October 20, 1939, containing ten pages, concerning setting up

Exhibit No.	Description
	and operation of "Arlington Heights" and "Spring Grove" stills, and conversations with Tony Horton, Louis Kaplan and Norton Kretske concerning payments to Mr. Kretske for "fixing of cases."
116	Photo showing exterior of John Briatta & Sons Barber Shop, 1062 West Polk Street.
117	Photo showing exterior of Briatta's Barber Shop, 1062 West Polk Street. (Photo taken from diagonal cross street).
118	Photo taken by Alcohol Tax Unit, Case No. 3611-M, of Albert Yario, alias Sheeny Alberts. Front and side views.
119	Photo of Nick Gerardi, alias Gerard.
121	Letter from Robert B. Ritter of Alcohol Tax Unit, Chicago, Illinois, dated November 10, 1938, in re Walter Kwiatkowski (their case No. I. N. 2431), asking that proceedings be again started against Kwiatkowski.
122	Photo, front view of premises at 6309 Eggleston Avenue.
123	Photo showing view of alcohol cans and mash vats after destruction of 6309 Eggleston Avenue.
124	Photo showing still after destruction at 6309 Eggleston Avenue.
125	Photo showing still, condenser and mash vats at 6309 Eggleston Avenue.
126	Photo of rear view of entrance to still room at 6309 Eggleston Avenue.
127	Photo of still, vats and condenser at 6309 Eggleston Avenue.
128	Original and copy of statement by Abraham H. Cohen, containing four pages, concerning setting of bond and making of bond of Widzes and representation by Cohen of Widzes.
129	File envelope in case of U. S. vs. Stanley Slesuraitis, Joseph F. Cole, Louis Pregonzer, Lincoln Rankin and Ralph Bogush, D. C. 30992, bearing various notations as to disposition of the case.

Exhibit No.	Description
130	File envelope in case of U. S. <i>vs.</i> Louis Kaplan, Edward R. Dewes, Victor Raubanas, Joseph F. Cole, Louis Pregonzer, Lincoln Rankin and Ralph Bogush, D. C. 31591, bearing notations as to sentencing of defendants.
131	Photostatic copy of notice of Attorney Peter P. Passman of presentation of petition to vacate orders forfeiting bonds and issuing bench warrants in case of U. S. <i>vs.</i> Joseph Netko, Case No. 31458.
132	Photostatic copy of petition to vacate orders forfeiting bonds and issuing bench warrants in case of U. S. <i>vs.</i> Joseph Netko, Case No. 31458.
133	Commissioner's File No. 19788 concerning Emil H. Beisner, Edward Farber, Adam Widzes, George Neiss, containing complaint alleging installation of 17,000 gallons of mash and 2 gallons alcohol in a building on the Emil Beisner farm at Arlington Heights, Cook County, Illinois, bearing notation on face thereof of appearance of Abraham H. Cohen for Widzes.
134	Sealed envelope containing receipt of William M. Brantman.
135	Photo, by Alcohol Tax Unit, Case No. 3883-M, of Fred Blumenthal, alias Fred Blum. Front view.
136	Letter from Assistant U. S. Attorney Alexander M. Campbell, Fort Wayne, Indiana, to Attorney Alfred E. Roth, dated July 15, 1939, in re U. S. <i>vs.</i> Edward Wroblewski, and stating that defendant Wroblewski changed his plea to guilty and on May 5, 1939, was sentenced to 18 months and fined \$500.00.
137	Letter from Alexander M. Campbell, Assistant U. S. Attorney, South Bend, Indiana, to Attorney Alfred E. Roth, dated October 7, 1938, in re U. S. <i>vs.</i> Edward Wroblewski, stating copy of indictment enclosed and the case is to be called during the Hammond sitting of the Federal Court.
138	Photo showing vat on Martin W. Mares farm, McHenry County, Illinois.

Exhibit No.	Description
139	Photo showing feed tank on Martin W. Mares farm, McHenry County, Illinois.
140	Photo showing vat and equipment on Martin W. Mares farm, McHenry County, Illinois.
141	Photo showing barn on the Martin W. Mares farm, McHenry County, Illinois.
142	Photo showing barn loft on the Martin W. Mares farm, McHenry County, Illinois.
143	Photo showing cookers on the Martin W. Mares farm, McHenry County, Illinois.
144	Photo showing cut away wall on the Martin W. Mares farm, McHenry County, Illinois.
145	Photo showing vat on the Martin W. Mares farm, McHenry, Illinois.
146	Photo showing barn on the Martin W. Mares farm, McHenry County, Illinois.
147	Photo, view of cookers and equipment, on the Martin W. Mares farm, McHenry County, Illinois.
148	Photo showing vat on the Martin W. Mares farm, McHenry County, Illinois.
149	Photo showing boilers on the Martin W. Mares farm, McHenry County, Illinois.
150	Photo of general view of house and out-buildings on the Martin W. Mares farm, McHenry County, Ill.
151	Photo of view of out-buildings on the Martin W. Mares farm, McHenry County, Illinois.
152	Photo, view of equipment on the Martin W. Mares farm, McHenry County, Illinois.
153	Photo, view of cooker on the Martin W. Mares farm, McHenry County, Illinois.
154	Photo, view of dismantled equipment in the yard of the Martin W. Mares farm, McHenry County, Illinois.
155	Photo, dismantled equipment, interior, on the Martin W. Mares farm, McHenry County, Illinois.

Exhibit No.	Description
156	File in case of U. S. <i>vs.</i> Emil H. Beisner, Edward R. Dewes, Victor Raubanas, Case No. 31201, containing photographs of Beisner farm, Alcohol Tax Unit Report, etc., bearing on face of file, notations as to "Sentence of all defendants."
157	File in case of U. S. <i>vs.</i> Harry Dukatt, Edward Farber, Jack Weber, Case No. 31193, bearing on its face notations as to disposition or sentence of the defendants. Report of Alcohol Tax Unit on Dominic Gaustella filed in case.
160	Report of Alcohol Tax Unit, dated April 21, 1938, (their case no. 5357-M) concerning the carrying on business of a distiller without giving bond, and carrying on business of a wholesale and retail liquor dealer without having paid special tax by Frank, Peter, Michael, and Anthony Hodorowicz and Clemens D. Dowiat. Report contains statements of witnesses and chemist's report. Contains 167 pages.
161	Indictment, case of U. S. <i>vs.</i> Frank Hodorowicz, Michael Hodorowicz, Peter Hodorowicz and Clemens W. Dowiat, Case No. 31013, filed June 3, 1938.
162	Indictment, case of U. S. <i>vs.</i> Frank Hodorowicz, Peter Hodorowicz and Clemens W. Dowiat, Case No. 31014, filed June 3, 1938.
163	Exhibits of Alcohol Tax Unit, Case No. 5357-M. (See Exhibit No. 160.)
164	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Frank
164a	Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clemens W. Dowiat, Case No. 31013. (3 pages.)
165	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Leo Vitale, Petro Mando, Dominic Sabatino, Michael Simanello. Case No. 30950. (2 pages.)
166	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Louis Pregenzer, Lincoln Rankin and Ralph Bogush, Case No. 31591. (2 pages.)
167	U. S. Attorney's Docket, case of U. S. <i>vs.</i> William Alfred Burba, alias William Wroblewski. Case No. 30379. (1 page.)

Exhibit No.	Description
168	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Emil H. Beisner, Edward R. Dewes, Victor Raubanas, Edward Farber, Adam Widzes, George Neiss, Leo Duthorn. Case No. 31502. (2 pages.)
169	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Emil H. Beisner, Edward R. Dewes, Victor Raubanas. Case No. 31201. (2 pages.)
171	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Frank Hodorowicz, Peter Hodorowicz, Clemens W. Dowiat. Case No. 31014. (5 pages.)
172	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Stanley Slesuraitis, Chester Chiafalo, Stanley Wawielewski, Carlo Sgaraglino, Stanley Wisniewski, George Miller, Paul Ksiazkiewicz. Case No. 31244. (2½ pages—carbon copy of part of last page.)
173	U. S. Attorney's Docket, case of U. S. <i>vs.</i> William J. Workman, L. R. Clavenger, <i>et al.</i> Case No. 29092. (3½ pages).
174	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Samuel J. Tishman, Nick Girardi, Max Cooper, Andrew Pollard, Walker Matthews. Case No. 30391. (1½ pages, with carbon copy).
175	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Walter Buchaniec, Pete Mackiewicz, Herman David, Joseph Netko, Richard Clement, Orland David. Case No. 31458. (3 pages).
176	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Clemens W. Dowiat, Anthony Hodorowicz, Carl Swanson. Case No. 30794. 1 page. (Libel).
177	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Stanley Slesuraitis, Joseph F. Cole, Louis Pregonzer, Lincoln Rankin and Ralph Bogush. Case No. 30992. (2 pages).
178	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Stanley Slesuraitis, Chester Chiafalo, Stanley Wisniewski, George Miller, Paul Ksiazkiewicz. Case No. 31244. (2 pages).
179	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Michael F. Donohue, Thomas J. O'Brien, Stanley Slesur, Lincoln Rankin. Case No. 31257. (1½ pages).

Exhibit No.	Description.
180a	Appellant's Brief. In the U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6580. U. S. <i>vs.</i> About 151,682 Acres of Land in McHenry County, Illinois, and Certain Personal Property, and U. S. <i>vs.</i> Joe Lojk.
180b	Appellant's Brief. In the U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6579. U. S. <i>vs.</i> About 151,682 Acres of Land in McHenry County, Illinois, and Certain Personal Property, and U. S. <i>vs.</i> John Jursich and Elinor Gladys Jursich.
186c	Complaint by Austin J. Kennedy, Investigator, Alcohol Tax Unit, against Edward Wroblewski, dated May 6, 1938.
187	Appellant's Brief. U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6860. U. S. <i>vs.</i> William Alfred Wroblewski and Edward Wroblewski.
190	Commissioner's File No. 20970 in re Edward Wroblewski and Lena Basso, containing certified copy of indictment in case of U. S. <i>vs.</i> Orville Modlin, <i>et al.</i> Case No. 6953. From District Court of the Southern District of Indiana, together with capias.
191	Appellant's Brief. U. S. Circuit Court of Appeals for the Seventh Circuit. Case No. 6774. U. S. <i>vs.</i> John Sebo.
192	Commissioner's File No. 20783, pertaining to Louis Bernstein, Paul Svce, Tony Naples, containing complaint against those named.
194	Transcript of Record. Case No. 6579. U. S. <i>vs.</i> About 151,682 Acres of Land in McHenry County, Illinois and Certain Personal Property, and U. S. <i>vs.</i> John Jursich and Elinor Gladys Jursich. Appeal to the U. S. Circuit Court of Appeals for the Seventh Circuit.
195	Indictment, case of U. S. <i>vs.</i> Harry Dukatt, Edward Farber, Jack Weber, Case No. 31193. Charging possession of a still located at McHenry County, Illinois. (9 counts).

Exhibit No. Description.

- 196 Indictment, Case of U. S. *vs.* Myron Mann, John Vancheri, Harry Dukatt, Arnold Galloni, Dominic Guastella, Art Stern. Case No. 31449. Charging possession of a still in a 5-story brick commercial type building located at 809 East 40th Street, Chicago, Illinois.
- 197 Photostatic copy of letter from William J. Campbell, U. S. Attorney, to Daniel D. Glasser, dated March 17, 1939, containing request for Mr. Glasser's resignation.
- 199 Mimeographed copy of Circular No. 2743, dated August 28, 1935, by Stanley Reed, Acting Attorney General, addressed to all U. S. Attorneys—in re policy to be pursued in prosecution of internal revenue liquor cases.
- 202 Letter from Daniel D. Glasser to Bishop Sheil re-enlisting pastors in campaign to stop illicit distillery, dated Nov. 21, 1938.
- 203 Inter-office memorandum to Mr. Campbell from Daniel D. Glasser dated January 6, 1939, in re Mitchell Brewing Company.
- 204 Certified copy of warrant for Pete Horodrowicz and Walter Hort dated January 13, 1937, and affidavit of complaint for warrant for Peter Horodrowicz and Walter Hort, both sealed by Schuyler C. Dwyer, U. S. Commissioner for the Northern District of Indiana, Hammond Division, together with a transcript of the record of the proceedings before the U. S. Commissioner for the Hammond Division of the Northern Indiana District in the case of U. S. *vs.* Peter Horodrowicz and Walter Hort.
- 207 Written document containing quotation from Justice Sutherland in regard to the duty of the U. S. Attorney.
- 209 Sealed envelope entitled "Personnel Record" of D. Glasser.
- 210 File wrapper and contents in case of U. S. *vs.* Leo Vitale, Petro Mando, Dominic Sabatino, Michael Simanello. Case No. 30950.

Exhibit No. Description.

- 212 File wrapper and contents in case of U. S. *vs.* Louis Bernstein and Tony Naples. Case No. 31451.
- 214 File wrapper and contents in case of U. S. *vs.* Joseph Digirolamo, *et al.* Case No. 30621. (Re—Indictment, D. C. 30351).
- 215 File wrapper in case of U. S. *vs.* Joseph Digirolamo, Mike Anzaldo, Frank Brown, Angelo Baraconi, John Marinto, John Sardo, Tony Laudicena, Joseph Andonna, Paul Andonna, Geno Andonna, Phillip Dimeino. Case No. D. C. 30351.
- 216 U. S. Attorney's Docket, case of U. S. *vs.* Joseph Digirolamo, *et al.* Case No. D. C. 30621. (3½ pages).
- 217 Daily reports of Inspector B. R. Smallwood, Special Investigator for the Alcohol Tax Unit, for period from July 1, 1937, to July 31, 1937, inclusive.
- 217a U. S. Attorney's Docket, case of U. S. *vs.* Joseph Digirolamo, Mike Anzaldo, Frank Brown, Angelo Baraconi, John Marinto, John Sardo, Tony Laudicena, Joseph Andonna, Paul Andonna, Geno Andonna, Phillip Dimeino. Case No. D. C. 30351. (4½ pages).
- 218 Daily reports of Inspector B. R. Smallwood, Special Investigator for the Alcohol Tax Unit, for period from June 1, 1937 to June 30, 1937, inclusive.
- 218a U. S. Attorney's Docket, case of U. S. *vs.* Albina Zarrattini and Sebastiano Larderuccio. Case No. D. C. 30550. (1 page).
- 219 Daily reports of Inspector B. R. Smallwood, Special Investigator for Alcohol Tax Unit, for period from May 1, 1937 to May 29, 1937, inclusive.
- 220 Daily reports of Inspector B. R. Smallwood, Special Investigator for Alcohol Tax Unit, for period from April 1, 1937 to April 30, 1937, inclusive.
- 220a U. S. Attorney's Docket, case of U. S. *vs.* Samuel J. Tishman, Nick Girard. Case No. D. C. 30926. (1 page.)

Exhibit No.	Description.
221	Daily reports of Inspector B. R. Smallwood, Special Investigator for Alcohol Tax Unit, for period from March 1, 1937 to March 31, 1937, inclusive.
221a	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Jack Weber. Case No. D. C. 30929. (1 page.)
222	Daily reports of Inspector B. R. Smallwood, Special Investigator Alcohol Tax Unit, for period from February 1, 1937 to February 27, 1937, inclusive.
222a	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Louis Nuzzo, John Jursich, Stanley Bronkowski, Dominic Guastello, Charles Banks, Joseph Severino. Case No. D. C. 30944. (2½ pages.)
223	Daily reports of Inspector B. R. Smallwood, Special Investigator Alcohol Tax Unit, for period from January 4, 1937 to January 30, 1937, inclusive.
224	Daily reports of Inspector Thomas Bailey, Special Investigator Alcohol Tax Unit, for period from January 1, 1938 to January 31, 1938, inclusive.
224a	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Walter Kwiatowski. Case No. 31627. (½ page.)
225	Daily reports of Thomas Bailey, Special Investigator Alcohol Tax Unit, for period from April 1, 1938 to April 30, 1938, inclusive.
225a	U. S. Attorney's Docket, case of U. S. <i>vs.</i> About 151,682 Acres of Land in McHenry County, Illinois and Certain Personal Property. Case No. 46331. (2½ pages.)
226	U. S. Attorney's Docket, case of U. S. <i>vs.</i> Clemens W. Dowiat, Anthony Hodorowicz, Carl Swanson. Case No. 30794. (1 page.)
227	U. S. Attorney's Docket, case of U. S. <i>vs.</i> John Kazmierczak. Case No. 30448. (1 page.)
228	File of Alcohol Tax Unit, Chicago, Ill. Their Case No. IN-2193, in re Clemens W. Dowiat and John Kazmierczak, containing seizure, statement of witnesses, chemist's report, and Federal Bureau of Investigation finger print report of

Exhibit No.	Description.
	Clemens W. Dowiat and Peter Hodorowicz. (Regarding property at Northwest Corner 124th St. and Ashland Avenue, Calumet Park, Illinois.)
229	File, case of U. S. <i>vs.</i> One 1937 Chrysler Sedan—Automobile Factory No. 6915369—Case No. D. C. 47442, with contents.
230	Report of Alcohol Tax Unit, Chicago, Ill. regarding Walter Kwiatkowski, their case No. IN-2431, concerning premises at 7915 Saginaw Ave., Chicago, Ill., containing statements of witnesses and Federal Bureau of Investigation finger print record of Walter Kwiatkowski, dated November 9, 1938. Also, report of Alcohol Tax Unit, Chicago, Ill. in re same person and premises with seizure list and statements of witnesses.
232	Photostatic copy of Notice by Attorney Edward J. Hess to the U. S. Attorney, Chicago, Ill., regarding presentation by Attorney Hess to the District Court of a motion to vacate and set aside bond forfeitures entered as to Joseph Netko, Walter Buchaniec, Pete Mackiewicz, dated May 15, 1939, in case of U. S. <i>vs.</i> Netko, <i>et al.</i> Case No. 31458.

And afterwards, to wit, on the 17th day of May, A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Patrick T. Stone, District Judge, appears the following entry, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

The United States of America }
vs. } No. 31825.
Daniel D. Glasser, *et al.*

ORDER CERTIFYING ORIGINAL EXHIBITS.

It is Hereby Ordered that all the original physical exhibits introduced on behalf of the United States, and all the original physical exhibits introduced on behalf of all the defendants on the trial of the above cause, be certified and sent by the Clerk of this Court to the Circuit Court of Appeals for the Seventh Circuit.

It Is Hereby Further Ordered that the said exhibits be and the same are by reference incorporated in and made a part of the bill of exceptions in said cause.

Enter:

Patrick T. Stone,
Judge.

Dated at Chicago, Illinois
May 17, 1940.

Approved:

William J. Campbell,
United States Attorney.

Approved:

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,
Appellants.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District this 2nd day of August, A. D. 1940.

(Seal) Hoyt King,
Clerk.

Endorsed: Filed Aug. 2, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the sixth day of August, 1940, there was filed in the office of the Clerk of this Court, in causes Nos. 7315, 7316 and 7317, a supplemental certificate to exhibits, which said supplemental certificate is in the words and figures following, to-wit:

Received of William J. Campbell, United States District Attorney, the following Exhibits which were introduced in the case of United States *vs.* Daniel D. Glasser, *et al*, in the District Court of the United States of America, in the Northern District of Illinois, Eastern Division.

Supplemental Exhibit List.

Exhibit No.	Description.
211	United States Attorney's docket sheets in the case of United States <i>vs.</i> Phillip Siegel. Case No. D. C. 30923.
211A	United States Attorney's file in the case of United States <i>vs.</i> Alvina Zarrattini and Sebastiano Larderuccio. Case No. D. C. 30550. (This exhibit contains a complete file.)
231	June 7, 1937 Grand Jury list, together with notations of True Bills and No Bills, and various memoranda. (Judge Wilkerson's Grand Jury.)

Northern District of Illinois, } ss.
Eastern Division.

Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United Circuit Court of Appeals for the Seventh Circuit Supplemental Exhibit List in the case entitled United States of America *vs.* Daniel D. Glasser, *et al*, D. C. 31825, said Exhibits are marked as follows, to-wit: Exhibit No. 211, 211a, 231.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District this 5th day of August, A. D. 1940.

Hoyt King,
Clerk.

(Seal)

Endorsed: Filed Aug. 6, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the seventh day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a petition for order on U. S. Attorney to produce missing exhibits, which said petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,	}	No. 7315.
<i>Plaintiff-Appellee,</i>		
<i>vs.</i>		
Daniel D. Glasser.		
<i>Defendant-Appellant.</i>		

PETITION FOR ORDER ON UNITED STATES ATTORNEY TO PRODUCE MISSING EXHIBITS.

To the Honorable Judges of Said Court:

Now come, Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth, appellants herein, and respectfully represent unto your Honors:

(1) That the jury returned the verdict in the District Court in the above entitled cause on March 8, 1940 and that on the same day an Assistant United States Attorney, Francis McGreal, asked the defendant, Alfred E. Roth, if he would have any objection to the District Attorney taking the Exhibits for the purpose of making a list of the same, to which the defendant, Alfred E. Roth, acquiesced.

(2) That the Notice of Appeal in this cause was filed on April 26, 1940, and that subsequently thereto on May 17, 1940, an order was entered that all the original physical exhibits introduced in the case be certified and sent by the Clerk of the District Court to the Circuit Court of Appeals for the Seventh Circuit.

(3) That the transcript of record herein was filed on May 28, 1940.

(4) That on July 31, 1940, the defendants, Daniel D. Glasser and Alfred E. Roth, called at the office of the Clerk of the Circuit Court of Appeals for the purpose of examining the Exhibits and were then and there informed that no exhibits had been forwarded to the Clerk of this Court.

(5) That the Clerk of this Court then called the Clerk of the District Court and was referred to Mr. Francis McGreal, an Assistant United States Attorney, who informed him that they were waiting for copies of certain exhibits which they had the previous week requested of the defendant, Daniel D. Glasser.

(6) That on the same day, July 31, 1940, after receiving the call from the Clerk of this Court, the United States Attorney delivered certain exhibits to the Clerk of the District Court who certified and delivered the same to the Clerk of this Court on August 2, 1940.

(7) That on August 3, 1940, the list of Exhibits as certified to this Court were examined and many exhibits were found to be missing.

(8) That it is necessary for your petitioners to have before this Court all the exhibits so that your petitioners might make reference to the same in the preparation of their brief and so that they may be referred to in their oral argument and that their rights will be seriously prejudiced without all of the exhibits before this Court.

(9) Wherefore, the petitioners pray that an order be entered herein directing the United States Attorney for the Northern District of Illinois to deliver to the Clerk of this Court all the Exhibits which have not already been submitted to the Clerk of the District Court for certification and transmittal, and upon the failure of the United States Attorney to deliver said missing exhibits to this Court within a reasonable time to be fixed by this Court that the judgments of the lower Court be reversed or for such other and further orders in the premises as this court shall seem meet and just.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth.

Endorsed: Filed Aug. 7, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the twelfth day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, an answer to petition for order on U. S. Attorney to produce missing exhibits, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America, Plaintiff-Appellee, vs. Daniel D. Glasser. Defendant-Appellant.	}	No. 7315.
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ANSWER TO PETITION FOR ORDER ON UNITED STATES ATTORNEY TO PRODUCE MISSING EXHIBITS.

The appellee, United States of America, answering the Petition herein by William J. Campbell, its attorney for the Northern District of Illinois, admits the allegations contained in Paragraphs (1), (2), (3), (4), (5), and (6), but denies that on August 3, 1940, many exhibits were found to be missing from the list of exhibits certified to this Court.

The appellee denies the averments set forth in Paragraph (7) of appellant's Petition, in that many of the certified exhibits were found to be missing. Further, that on August 2, 1940, when said exhibits were delivered to Mr. Kenneth J. Carrick, Clerk of the Circuit Court of Appeals, he assigned Mr. Blanchard, one of his Assistants, to examine and check the certified list of exhibits. This examination was made in the presence of the defendants, Daniel D. Glasser and Alfred E. Roth. After the examination was completed, Mr. Blanchard reported to Mr. Kenneth J. Carrick that the only document found to be missing was Exhibit Number 4, which had been certified on the list of exhibits but was not found among them.

The appellee further states the fact to be that Exhibit 4 for identification is a certain criminal docket kept and maintained in the United States Attorney's Office; that it was marked for identification during the trial of the case and that several sheets were removed from the same, which sheets were formally introduced into evidence and became exhibits in the case.

This appellee further states that all of the exhibits introduced in the trial of the case, with the exception above stated, are in the possession of the Clerk of the Circuit Court of Appeals.

This appellee further states that the relief prayed for in Paragraph (9) should be respectfully denied.

William J. Campbell,
*United States Attorney for the
Northern District of Illinois.*

Endorsed: Filed Aug. 12, 1940. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the twelfth day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a reply to answer of U. S. Attorney for order to produce missing exhibits, which said reply is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Daniel D. Glasser. <i>Defendant-Appellant.</i>	}	No. 7315.
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NOTICE.

To: William J. Campbell,
 United States Attorney,
 Chicago, Illinois.

Please Take Notice that on August 12, 1940, we shall file with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit a petition to be presented to the Court, a copy of which is hereto attached and served upon you.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth.

Received a copy of the above Notice and Petition therein referred to.

William J. Campbell,
 United States Attorney,
By F. J. McGreal.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America, <i>Plaintiff-Appellee.</i> <i>vs.</i> Daniel D. Glasser. <i>Defendant-Appellant.</i>	}	No. 7315.
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REPLY TO ANSWER OF UNITED STATES ATTORNEY FOR ORDER TO PRODUCE MISSING EXHIBITS.

To the Honorable Judges of Said Court:

Now comes Daniel D. Glasser, Norton I. Kretske and Alfred E. Roth, and for reply to the answer of the United States Attorney to the petition heretofore filed by Appellants for an order directing the United States Attorney to deliver to the Clerk of this Court all the exhibits which have not already been submitted to the Clerk of the District Court for certification and transmittal, state:

That the answer states, among other things, as follows:

"This appellee further states that all of the exhibits introduced in the trial of the case, with the exception above stated, are in the possession of the Clerk of the Circuit Court of Appeals."

Petitioners respectfully represent that the fact is that the following exhibits which were all in the possession of the United States Attorney, are not among those which have been certified to the Clerk of this Court:

Exhibit 198

Exhibit 205

Exhibit 206

Exhibit 208

Exhibit 36

Exhibit 182

Exhibit 92

Petitioners further represent that Exhibit 4 was the entire docket of criminal cases and was introduced as a "bound, closed case docket", and that same has not been certified to the Clerk of this Court.

Petitioners further represent that there was entered into a stipulation with Daniel D. Glasser and the United States Attorney to certify to the clerk of the District Court for a transmittal to the clerk of the United States Circuit Court of Appeals, the United States Commissioner Walker's file in the case of the United States *versus* Louis Laplan, which has not, to this date, been certified to this court.

That the appellants, Glasser and Roth, admit that they were in the office of the clerk of the United States Circuit Court of Appeals on August 2, 1940, that when they arrived at the said Clerk's Office they found waiting an Alcohol Tax Unit agent, together with an Assistant United States Attorney, who desired to check the exhibits, together with the said appellants. The said appellants allege that the clerk, through his deputy, performed the duty of checking the exhibits delivered to the said clerk, and that while the said appellants were in the clerk's office on said day they did not check any exhibits, which can be verified by the clerk of this Court.

Petitioners respectfully represent that, as stated in their original petition for the order on the United States Attorney, with reference hereto, it is vital to their interests that all the exhibits which the United States Attorney had in his possession for such a great length of time be certified, and sent to the clerk of this court forthwith, so that the brief of appellants may make reference thereto.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth.

Endorsed: Filed Aug. 12, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the thirteenth day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, an additional answer, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

United States of America, Plaintiff-Appellee, vs. Daniel D. Glasser, et al., Defendants-Appellants.	}	No. 7315.
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ADDITIONAL ANSWER.

To the Honorable Judges of Said Court:

Now comes William J. Campbell, United States Attorney, and for additional answer to the new matters and things mentioned in the reply herein filed, states the following:

Exhibit 36 is included in the envelope marked Exhibit 229 filed in the office of the Clerk of this Court.

Exhibit 92 is submitted herewith, but this appellee states that this document was merely identified as Exhibit 92, as appears in Book 4, page 511 of the Transcript of Record filed herein. This document was not formerly received in evidence because of an objection raised by counsel for the appellant, Glasser. However, this appellee submits this document for this Court's decision as to whether or not it was an exhibit.

The document referred to as Exhibit 4 is the Closed Docket of Criminal cases of the District Attorney's office. After it was identified, one page was extracted therefrom, being the record in Case Number 29092, *United States vs. Workman*. The entire Criminal Docket was not introduced as an exhibit.

The document referred to as Exhibits 182, 198, 205, 206 and 208 are all defendants' exhibits which did not come into the possession of the United States Attorney at the time of the trial or thereafter and are not now in possession of the United States Attorney or any of his assistants.

The original typewritten stenographic transcript of the trial does not show at page 3231-3232-3234 that documents 205, 206 and 208 were offered and received in evidence, although this notation is made in the Bill of Exceptions heretofore filed, in Book 5, page 1284.

Further answering the reply, this appellee states that no stipulation was entered into with Daniel D. Glasser to certify to the Clerk of the District Court for transmittal to the Clerk of the United States Circuit Court of Appeals the United States Commissioner's file in the case of United States *vs.* Louis Caplan, but states the fact to be that Daniel D. Glasser mentioned this matter to Francis J. McGreal, an assistant United States Attorney, at the time the clerk forwarded the Clerk's Record of Proceedings and was told that since this file was not a part of the Clerk's Record, it could not properly be sent to the Clerk of the Circuit Court of Appeals by the Clerk of the District Court. Further, this document cannot be included as an exhibit by the stipulation of the parties.

An examination of the joint assignment of errors appearing on pages 114 to 129 of the Transcript of Record filed herein indicates no error is predicated upon the introduction of any of the above-mentioned exhibits.

Wherefore, this appellee respectfully suggests that the Petition for an order on the United States Attorney with reference to the exhibits be dismissed.

William J. Campbell,
United States Attorney.

Endorsed: Filed Aug. 13, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the fourteenth day of August, 1940, the following further proceedings were had and entered of record, to-wit:

Wednesday, Aug. 14, 1940.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

7315 The United States of America,
 Plaintiff-Appellee,
 vs.
 Daniel D. Glasser,
 Defendant-Appellant.

7316 The United States of America,
 Plaintiff-Appellee,
 vs.
 Norton I. Kretske,
 Defendant-Appellant.

7317 The United States of America,
 Plaintiff-Appellee,
 vs.
 Alfred E. Roth,
 Defendant-Appellant.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

It is ordered that all exhibits identified at the trial of this cause which have not already been certified to this Court be transmitted to this Court by the United States District Attorney without prejudice to the right of the District Attorney to dispute the materiality of said exhibits before this Court.

And afterwards, to-wit: On the twenty-seventh day of August, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court an additional assignment of error, which said additional assignment of error is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,	}	No. 7315.
<i>vs.</i>		
Daniel D. Glasser,		
<i>Appellant.</i>		

ADDITIONAL ASSIGNMENT OF ERROR.

By leave of Court, Appellant files herein an Additional Assignment of Error, to wit:

The prosecution committed prejudicial error in sending to the jury upon its retirement the document numbered Exhibit '15 (being the statement of Edward R. Dewes dated October 20, 1939), which said document had not been admitted in evidence at the trial.

Daniel D. Glasser,
Appellant.

Dated: August 13, 1940.

Endorsed: Filed Aug. 27, 1940. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the twenty-seventh day of August, 1940, in cause No. 7316, there was filed in the office of the Clerk of this Court, an additional assignment of error, which said additional assignment of error, is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America, <i>Plaintiff-Appellee,</i>	} No. 7316.
<i>vs.</i>	
Daniel D. Glasser, <i>et al.,</i> <i>Defendants-Appellants.</i>	

ADDITIONAL ASSIGNMENT OF ERROR AS TO
EXHIBIT 115.

By leave of Court, Appellant files herein an Additional Assignment of Error, to wit:

The prosecution committed prejudicial error in sending to the jury upon its retirement the document numbered Exhibit 115 (being the statement of Edward R. Dewes dated October 20, 1939) which said document had not been admitted in evidence at trial.

Norton I. Kretske.

Dated: August 26, 1940.

Approved Aug. 27, 1940.

William M. Sparks,
Circuit Judge.Endorsed: Filed Aug. 27, 1940. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the twenty-seventh day of August, 1940, in cause No. 7317, there was filed in the office of the Clerk of this Court, an additional assignment of error, which said additional assignment of error is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,
Plaintiff-Appellee, }
vs. } No. 7317.
Daniel D. Glasser, et al.,
Defendants-Appellants. }

ADDITIONAL ASSIGNMENT OF ERROR AS TO
EXHIBIT 115.

By leave of Court, Appellant files herein an Additional Assignment of Error, to wit:

The prosecution committed prejudicial error in sending to the jury upon its retirement the document number Exhibit 115 (being the statement of Edward R. Dewes dated October 20, 1939) which said document had not been admitted in evidence at trial.

Alfred E. Roth.

Dated: August 26, 1940.

Endorsed: Filed Aug. 27, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the fourth day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a motion to suppress the brief of Daniel D. Glasser, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America, }
Plaintiff-Appellee, }
vs. } No. 7315.
Daniel D. Glasser, et al.,
Defendants-Appellants. }

MOTION.

Now comes William J. Campbell, United States Attorney for the Northern District of Illinois, and moves the

Court to suppress the brief of Daniel D. Glasser, filed August 30, 1940, in violation of Rule 22, Subdivision 6 thereof, of the Rules of this Court, and I will support said Motion by the Affidavit of Assistant United States Attorney Francis J. McGreal, which Affidavit is hereto made a part of this Motion.

William J. Campbell,
United States Attorney.

Endorsed: Filed Sept. 4, 1940. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the fourth day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, points and authorities in support of motion to suppress, etc., which said points and authorities are in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,	}	No. 7315.
<i>Plaintiff-Appellee,</i>		
<i>vs.</i>		
Daniel D. Glasser,		
<i>Defendant-Appellant.</i>		

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SUPPRESS BRIEF OF APPELLANT, DANIEL D. GLASSER.

Subsection 4 of Rule 16 of this Court is as follows:

"Statement of Facts. The first paragraph of this subdivision of the brief shall state, briefly and concisely, the nature of the case and its disposition in the District Court. To illustrate:

" 'This action was brought to recover damages occasioned by the alleged negligence of the defendant in driving his automobile. The jury rendered a verdict for the plaintiff upon which the court entered the judgment from which this appeal is taken. The errors relied on arise out of instructions, rulings on evidence, and failure to grant defendant's motion to direct a verdict.'

"Then shall follow a concise statement of the facts, without argument or comment thereon. When the transcript discloses controversy respecting such facts, each version shall be stated. The statement must show the pages of the transcript where the recited facts appear."

This Court, in an Order entered in this case on August 28, 1940, upon a Petition filed by the appellants for leave to file an extended brief of 160 pages, stated as follows:

"Counsel must bear in mind that, we do not want, and will not permit, extended copying of evidence in the brief. It is neither proper or helpful."

In the case of *Lawson v. United States*, 9 F. (2d) 746, at page 747, Judge Evan A. Evans stated as follows:

"The briefs filed in this case are unfortunately of little help to the court. They totally ignore rule No. 23. No attempt has been made by either counsel to refer to the page of the transcript to support a statement of fact therein appearing. While opposing counsel differ as to the facts, they have rested their case upon their unsupported assertions. We call the attention of the bar to the rules announced by this court October 6, 1925, and we particularly ask for a strict adherence to rule No. 23, subd. 2 (a), respecting the preparation and submission of briefs. Compliance with the rule is not merely a matter of convenience to members of the court, but assists materially in the administration of justice."

Respectfully submitted,

William J. Campbell,
United States Attorney.

Endorsed: Filed Sept. 4, 1940. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the fourth day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, an affidavit of Francis J. McGreal, which said affidavit is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Daniel D. Glasser, <i>Defendant-Appellant.</i>	}	No. 7315.
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AFFIDAVIT.

State of Illinois }
County of Cook } ss:

Francis J. McGreal, being first duly sworn, on his oath deposes and says that he is one of the Assistant United States Attorneys who participated in the trial of the above cause before the Honorable Patrick T. Stone, United States District Judge, and that on August 30, 1940, there was filed in this Court the brief of Daniel D. Glasser, and that he has personally examined said brief and states the fact to be that said Statement of Facts is not a concise Statement, but that it contains many instances wherein the defendant-appellant argues and comments on the facts.

Affiant further states that in many instances, between pages 1 and 57, the defendant-appellant, in violation of the Rules, has failed to set forth the pages of the Transcript to support his Statement of Fact therein appearing.

Affiant further states that the nature and character of said comments are as follows and appear at the following places:

"The handling of liquor cases is by far the heaviest assignment in the U. S. Attorney's office." (Pages 2-3.)

"Morgan's figures are evidently quite inaccurate." (Page 3.)

"Assuming a like percentage in the Northern District of Illinois, indicates that Glasser handled approximately 1,500 criminal liquor cases during his service in the District Court." (Page 3.)

"• • • which did not merit presentation in court." (Page 3.)

"* * * judicial notice will be taken." (Page 3.)

"Judge Igoe's testimony also was that Glasser acted in close cooperation with him." (Page 4.)

"In his supervision of Glasser's work, Judge Igoe was familiar with and approved of Glasser's conduct." (Page 4.)

"* * * also with the conduct of the Hodorowicz cases culminating in the conviction of Frank Hodorowicz, the ringleader." (Page 4.)

"Judge Woodward was prevented, by the objection of the prosecution, in testifying whether Glasser appeared to represent the Government in a proper and conscientious manner." (Page 4.)

"Glasser's work was impeded by conditions effecting the Alcohol Tax Unit." (Page 5.)

"Some of the agents of the Alcohol Tax Unit also were incompetent and some dishonest, but the record does not indicate that Glasser was given any warning or information by which to govern himself in dealing with these agents." (Page 6.)

"Principle witnesses for the prosecution consisted of convicts, some of them presently inmates of penitentiaries or prisons, and practically all of whom had been prosecuted by Glasser." (Page 6.)

"There was no evidence of any kind, either direct or indirect, that Glasser ever received a bribe and none that he ever solicited any." (Page 6.)

"There was no testimony of payment of money to any defendant here in connection with the Svec case, the Jurkas case, the Workman case and the Vitale case." (Page 7.)

"Under leading questioning by the prosecutor * * *." (Page 9.)

"The case is still in the same condition although Swanson has long since admitted his guilt." (Page 10.)

"Under leading questions by the Court * * *." (Page 13.)

"W. Kwiatowski was unintelligible as a witness, so much so that the defense, to expedite the trial, admitted in evidence, by agreement, his written statement to the Government." (Page 13.)

"On cross-examination it clearly appeared that Kwiatowski did not understand the written statement which he had signed for the prosecution." (Page 13.)

"Under leading and repeated questions, witness said * * *." (Page 15.)

"There is no evidence in the record that any report was ever made by the Alcohol agents to Glasser implicating Swanson, Del Rocco or Joppek." (Page 15.)

"This case was not mentioned in either the indictment or the Bill of Particulars." (Page 16.)

"The indictment conflicts with Raubunas' testimony." (Page 17.)

"The indictment is entirely silent." (Page 17.)

"Moreover, in July 1939, eight or nine days after his conviction, Raubunas signed a written statement." (Page 17.)

"At the trial when confronted with the inconsistency between this statement and his testimony * * *." (Page 17.)

"Ostensibly to put him under bond * * *." (Page 17.)

"The witness could not testify about dates." (Page 21.)

"The prosecution did not introduce any of this Transcript of the Grand Jury testimony affecting Kaplan, Raubunas, Dewes and others except a short portion of one of Cole's appearances where most of the questions were regarding his health."

"Raubunas claimed he called them crooks. However, a month later he testified he gave \$300.00 to Farber." (Page 23.)

"Raubunas was convicted by Mr. Ward in the Arlington Heights case on the indictment secured by Glasser." (Page 24.)

"After this testimony, the defense filed a praecipe for subpoena for this Bishop as a witness." (Page 25.)

"The praecipe was filed on February 24, 1940. On February 26, which was many days after his previous testimony * * *." (Page 25.)

"Edward Dewes—inmate of the jail at Milan, Michigan, being convicted upon an indictment returned by Glasser—Dewes' testimony regarding the operation and principals of the Arlington Heights still was substantially similar to that of Raubunas up to the point

of the meeting with Horton, Farber and Raubunas in the Insurance Exchange Building." (Page 25.)

"(Note: Beisner and Widzes were subpoenaed by the Government but not used as witnesses.)" (Page 26.)

"This matter was not mentioned in the Bill of Particulars." (Page 30.)

"* * * but the prosecutor was unable to produce any such report." (Page 32.)

"A few months after Glasser's activity in convicting the 12 defendants in the Murdock Farm case, and endeavoring to obtain evidence against Abosketas in that case, renewed activity appeared with respect to prosecution of Abosketas in Wisconsin." (Page 33.)

"Whereupon the Court's questions indicated that he confused the identities of Nick Gerardi and Clementi * * *." (Page 34.)

"The trial Judge, by leading questions, caused Workman to testify that Glasser did not show Judge Sullivan pictures of the still. (Judge Barnes testified that he would not allow prosecutor to show him pictures of a still, that a prosecutor fit for his position knew Judge Barnes' attitude on that (B. E. 1006).)" (Page 35.)

Note: This conversation between Glasser and Svec in Glasser's office is listed as Overt Act 22 in the Indictment. (Rec. 19.) (Page 37.)

"There was no testimony that Dowd ever proceeded with the investigation of this matter or ever filed a report on this alleged matter with his superiors or ever presented any such report to the U. S. Attorney or to Glasser." (Page 40.)

"(Note: Investigator Dowd did not deny Glasser's testimony that Dowd suggested a no-bill in one case and an hour in the custody of the Marshal for Vitale." (Pages 41-42.)

"The fact is, as shown by the record and by Judge Barnes' testimony, that the car was ordered returned to Mrs. Rose Vitale and not to Leo Vitale.)" (Page 42.)

(We desire to call to the Court's attention that the use of the brackets found herein embracing certain extracts are used by the defendants in their brief and are not ours.)

"Glasser most emphatically desired to prosecute Kaplan, Raubunas and Dewes, * * *." (Page 46.)

"* * * (this conversation was not denied on rebuttal by Bailey) * * *." (Page 48.)

"* * * (this was not denied by Cloonan)" (Page 52.)

"* * * (here Bailey testified that the conferences out in the jail were held on February 25, 1938)." (Page 53.)

Francis J. McGreal,
Francis J. McGreal,

Assistant United States Attorney.

Subscribed and sworn to before me this 4th day of September, A. D., 1940.

(Seal)

Anna L. Minahan,
Notary Public.

Endorsed: Filed Sept. 4, 1940. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the eleventh day of September, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a memorandum in support of answer to motion to suppress, which said memorandum is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America,	} No. 7315.
<i>Plaintiff-Appellee.</i>	
<i>vs.</i>	
Daniel D. Glasser,	
<i>Defendant-Appellant.</i>	

MEMORANDUM IN SUPPORT OF ANSWER TO MOTION OF PROSECUTION TO SUPPRESS BRIEF OF APPELLANT GLASSER.

We respectfully submit that the extraordinary Motion of the prosecution to suppress appellant's brief is frivolous. Its only effects are to impose unnecessary work upon

the Court, to encumber the files of the Court with unnecessary motions, affidavits and answers, to embarrass with unnecessary expense the appellant Glasser, whose limited financial means are known to the prosecution, and to enforce upon appellant's counsel unnecessary labor.

The tactics of the prosecution at the trial rendered the preparation of a proper Statement of Facts unusually difficult and arduous. The oral testimony at the trial covered approximately 4,000 typewritten pages, which resulted in a Bill of Exceptions of about 1500 typewritten pages. The Government introduced also several hundred exhibits comprising about 1000 pages (exclusive of Exhibit No. 4, being copy of docket containing record of about 500 cases, only one or two of which were involved here).

Due to the limits of space in the brief and of time for preparation thereof, appellant's counsel has been unable to analyze and discuss the nature of the contents of these exhibits.

In the preparation of the Statement of Facts, the use of summary statements of fact and of statements of ultimate facts, always desirable, became more useful than in the ordinary case due to the great length of the trial and the nature of the testimony for the prosecution. To the use of such summary statements of fact and statements of ultimate facts, the prosecution objects, with the unfounded claim that such are not permitted by the rules of this Court.

The frivolous nature of the Motion of the prosecution is apparent from every viewpoint: First, the Motion is an extraordinary one, and the use attempted by the prosecution is not sanctioned by good practice or a regard for proper procedure. In a long experience in the Appellate Courts of the National and State Governments, appellant's counsel has never heard of a Motion to suppress a brief for other than scandalous or offensive matter. Counsel is confident that the records of this Court will show no similar Motion, certainly none that has been given consideration by the Court.

Again, the hasty, ill-considered and frivolous nature of the Motion of the prosecution appears in its failure to cite any authorities in support of its charge that the Statement of Facts is improperly prepared. What meaning the prosecution attaches to the words "Statement of Facts" cannot be ascertained from their Affidavit and Motion, or their

Brief. Certainly, that meaning, whatever it may be, is not recognized by the Courts and legal authorities.

"Facts includes the existence or non-existence, in the present or in the past, of persons or tangible things, and condition or location in space, states of mind, relations of things and persons, and the happening of events."

Restatement, Restitution, Sec. 6a.

In the case of *Wrought Iron Bridge Company v. Commissioners*, 101 Illinois 518, 520, the Court said:

"Whatever occurs or exists is properly termed a fact, hence facts are distinguished as being either conditions or states of things and events. They are also distinguished as either physical or physiological. But when considered with reference to the office which they perform in, and the relation they bear to, the trial of a cause in a court of justice, the most important subdivision of facts, so far as the present inquiry is concerned, is that which distinguishes them into 'principal' and 'evidentiary'. The plaintiff in every action either assumes or expressly charges upon the record the existence of certain facts, upon the proof or admission of which his right of recovery depends. These facts thus assumed or directly alleged to exist are the principal facts pertaining to the suit. Sometimes they are established or proved by direct testimony, but they are often—indeed, most generally—established by the proof of other facts, from which their existence is inferred. The latter being mere evidence of the principal facts are properly designated as evidentiary facts and are so known to the law."

In the case of *Woodfill v. Patton*, 76 Indiana 575-579, the Court said:

"Facts are occurrences and events; evidence, the means by which the happening or the character of such events are shown. There are two kinds of facts, evidentiary facts and inferential facts."

The frivolous nature of the Motion of the prosecution here is further demonstrated by the fact that their paper entitled "Points and Authorities in Support of Motion to Suppress Brief of Appellant Glasser" not only fails to support the Motion but has little if any logical connection therewith. That paper begins by misstating the number of the rule of the Court. The paper then quotes the instruc-

tions of the Court in granting leave to appellant to file a Brief of 160 pages against extended copying of evidence in the Brief. The inconsistency of the prosecution appears in the fact that their Motion to suppress appellant's brief is based upon appellant's compliance with this instruction of the Court and upon appellant's compliance with the rules of the Court, in that summary statements of fact and statements of ultimate fact have been used in appellant's brief rather than extended copying of the evidence in instances where there was and can be no controversy by the prosecution of the accuracy of the facts so stated and summarized.

Further proof of the frivolous nature of the Motion of the prosecution is furnished by its citation of the case of *Lawson v. United States*, 9 Fed. 2d, 746, which refers to the necessity for giving page references in the brief to the transcript of record. This point of the prosecution clearly is not made in a serious spirit. The appellant's Statement of Facts contains approximately 160 references to the pages of the Bill of Exceptions, and the Argument in the Brief fortifies this by approximately 225 additional page references to the Bill of Exceptions.

The superficial nature of this extraordinary proceeding by the prosecution is demonstrated not only by the insufficiencies in matter of substance above noted but also in the informal errors as well, namely:

Misstating the number of the rule of the Court above mentioned.

Substitution in the Affidavit of the word "effected" for the word in the Brief "affected".

Substitution of the word "principle" in the Affidavit for the word "principal" in the Brief.

Garbling the fifth objection in the Affidavit in such a manner as to imply erroneous typography and grammar in the Brief.

In view of these considerations, inquiry naturally arises as to the reason for the filing of this extraordinary Motion. It is directed solely against Glasser, against whom there was no direct evidence at the trial of the charge in the indictment. The Statement of Facts in Glasser's brief, we respectfully submit, establishes the strength of Glasser's case and does so by proper method and in accordance with the rules of the court. Can it be that the prosecution, realizing their inability to meet Glasser's

brief, are attempting to defeat his appeal by this indirect and extraordinary means?

In conclusion, we respectfully submit that the Motion of the prosecution and accompanying papers are entirely without merit, are frivolous., and that the Motion should be denied by the Court.

Inasmuch as such motions as this of the prosecution, if encouraged by the Court, will doubtless become numerous, the granting of the Motion would establish a precedent of importance beyond the present case.

In view of the importance of this matter, both to Appellant Glasser and his counsel personally, and to the Court if novel precedent is considered, we respectfully request that, should the Court, after consideration of these papers, deem further attention to the Motion expedient, the matter be set for oral argument by the parties before the full Court.

Respectfully submitted,

John Elliott Byrne,
Attorney for Appellant,
Daniel D. Glasser.

Endorsed: Filed Sept. 11, 1940. Kenneth J. Carriek,
Clerk.

And afterwards, to-wit: On the thirteenth day of September, 1940, the following further proceedings were had and entered of record, to-wit:

Friday, September 13, 1940.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

7315	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Daniel D. Glasser, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, East- ern Division.
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It is ordered that the motion of counsel for appellee to suppress the brief of appellant filed August 30, 1940, be, and it is hereby, denied.

And afterwards, to-wit: On the thirteenth day of December, 1940, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 7315, 7316, 7317. OCTOBER TERM AND SESSION, 1940.

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee.

vs.

DANIEL D. GLASSER, NORTON I.

KRETSKE, and ALFRED E. ROTH,

Defendants-Appellants.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

December 13, 1940.

Before SPARKS, TREANOR and KERNER, *Circuit Judges.*

KERNER, *Circuit Judge.* This is an appeal from a judgment rendered on a verdict of guilty upon an indictment charging the above named defendants, together with Anthony Horton and Louis Kaplan, with a conspiracy to defraud the United States under Section 37 of the Criminal Code (R. S. Sec. 5440; 18 U. S. C. A. Sec. 88). All of the defendants were found guilty. Glasser, Kretske and Kaplan were each sentenced to imprisonment for a term of 14 months, Horton was placed on probation, and Roth was ordered to pay a fine of \$500. Only Glasser, Kretske and Roth separately appealed.

The defendants demurred to the indictment and entered a motion to quash on the grounds: (1) that the grand jury was illegally constituted because women were excluded therefrom; (2) that the indictment was not properly returned in open court; and (3) that it was defective. The demurrers and the motion to quash were overruled.

On oral argument the principal point stressed was that the evidence failed to sustain the verdict of the jury, al-

though other points were raised in the briefs. All of these will be discussed in due course.

The Motion to Quash. It is claimed that the District Court erred in overruling the motion to quash the indictment, because the grand jury that found and presented the indictment was not lawfully constituted, in that the commissioner appointed to select the grand jury selected no women to serve on the grand jury.

The indictment was filed on September 29, 1939. On May 12, 1939, the Legislature of the State of Illinois enacted an Act¹ making women eligible for jury. The constitutionality of that Act was sustained on August 8, 1939, in *People v. Traeger*, 372 Ill. 11. The Northern District of Illinois is composed of 18 counties of the State of Illinois. Under the Act in question the county boards of 17 of these counties were privileged to wait until September 1, 1939 before including women on the jury lists. The members of the September 1939 grand jury were summoned for duty on August 25, 1939. It follows that there was no irregularity in not including women on the jury list. Moreover in the affidavits filed in support of the motion to quash, it was not alleged that the appellants have been prejudiced in any way or that anyone of the grand jurors was incompetent or in any way disqualified. Under such circumstances irregularities in the selection of jurymen are to be disregarded. *Wolfson v. United States*, 101 F. 430; *Moffatt v. United States*, 232 F. 522; and *Petition of Salen*, 231 Wis. 489. The reason for this rule is that the grand jurors do not try the case but merely charge the accused. The manner of their selection is of no consequence to him, he being entitled to claim only fair and impartial grand jurors who possess the necessary qualifications, whereas it is of great consequence that the administration of justice shall not be delayed by mere technical objections. *People v. Lieber*, 357 Ill. 423, 436.

Was the Indictment Properly Presented? The point is made that to constitute a valid indictment, it must appear that the indictment was presented in open court and the fact entered of record.

1. Ill. R. S. 1939, Sec. 1, Chap. 78. "The county board of each county shall at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct in the county, giving the place of residence of each name on the list, to be known as a jury list."

It is true that a defendant cannot rightfully be put upon trial for a criminal offense prosecuted by an indictment unless the record shows that the indictment was returned into open court by a grand jury. It need not, however, appear by any set form of phraseology that the grand jury appeared in open court and returned the indictment. All that is necessary is that by apt words it must be made to appear from the record that the grand jury appeared in open court and returned into court the indictment to which the defendant is required to plead. The record now before us shows that it contains a *placita* in regular form showing the convening of the court and recites the presence of the Judges of the Court of the Northern District of Illinois, Eastern Division, the United States Marshal and the Clerk of the Court; that on September 29, 1939, at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, the grand jury returned four indictments in open court. On the face of the indictment in this case in the handwriting of the Clerk of the Court is the statement, "Filed in open court this 29th day of September, A. D. 1939, Hoyt King, Clerk," and preceding this statement is a notation "A true bill," "George A. Hancock, Foreman." We are of the opinion that the record in this case is sufficient, and the contention cannot be sustained.

Is the Indictment Defective? The indictment charged a conspiracy to defraud the United States under Section 37 of the Criminal Code, 18 U. S. C. A. Section 88, which provides that "If two or more persons conspire . . . to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both." Now, the appellants make the point that the indictment is defective, because (a) it is duplicitous, (b) it is repugnant and inconsistent, and (c) it is vague and indefinite.

The indictment in substance charged that the defendants and divers other persons to the grand jurors unknown, conspired to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the Courts of the United States by an Assistant United States Attorney, to prosecute certain delinquents for crimes and offenses cognizable under the

authority of the United States as the same should be presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud, and more particularly its right to a conscientious, faithful and honest representation of its interest in certain suits and causes brought and pending in the United States in the Northern District of Illinois by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function under and by authority of a department and office of the Government of the United States, with intent to influence his decision and action on certain questions and causes which were at times pending, and which were by law brought before such officer in his official capacity, and with the intent to influence to commit and in committing, and to collude in committing certain frauds on the United States, and to induce such officer to do and to omit from doing certain acts in violation of his lawful duty.

The indictment further alleged that Glasser was an Assistant United States Attorney for the Northern District of Illinois, employed to prosecute all delinquents for crimes and offenses cognizable under the authority of the United States, and as such he did act for and on behalf of the United States in certain official functions under and by authority of the Department of Justice of the United States, and as such officer he had certain decisions to make and actions to take on certain questions, causes and proceedings brought before him in the performance of his duties as such Assistant United States Attorney; that it was part of the conspiracy that the defendants would solicit certain persons named in the indictment, charged with violating or about to be charged with violating the laws of the United States, to promise or cause to promise money to be paid or pledged to the defendants to be used to influence and corrupt Glasser in his official capacity in his decisions on certain questions, causes and proceedings, with the intent that the defendants would accept and use said money to corruptly, wrongfully and improperly influence Glasser in his decisions and thus allow a fraud to be committed on the United States in violation of his lawful duties as an assistant United States attorney.

The indictment further alleged that Glasser would meet

and hold conversations with the other defendants and inform them what they should do to carry out the conspiracy and would instruct them as to what steps or action each of them would take in the matters in which he was representing the United States Government and thus Glasser conspired with the other defendants to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by an assistant United States Attorney.

The Government furnished the appellants with a bill of particulars in which many overt acts were specified, in each of which one or more of the alleged conspirators is alleged to have participated.

It is claimed that the indictment is duplicitous because, it is said, it charges two offenses. With this contention we cannot agree for the reason that in our opinion the indictment charges merely a conspiracy to defraud the United States Government, entered into between an assistant United States Attorney, the defendants Kretske, Roth, Horton, Kaplan and other persons to the grand jurors unknown. Nor is the indictment repugnant and inconsistent on the ground that it alleges that the defendants conspired with each other and with other persons to the grand jurors unknown. *United States v. Heitler*, 274 F. 401; *United States v. Manton*, 107 F. (2) 834, 839.

Appellants also complain that the indictment is defective because it alleges a case where concerted action is necessary, and that in such a case, conspiracy will not lie, and they cite a line of cases² where that principle has been upheld. These cases are not in point for the reason stated in *United States v. Manton*, *supra*. In that case it was charged that the defendants had conspired to defraud the United States of and concerning its right to have the lawful functions of the judicial power of the United States exercised and administered free from corruption, improper influence, dishonesty and fraud. In disposing, adversely to the defendants, of a like contention as is here made, the court said (p. 839): "The indictment does not charge as a substantive offense the giving or receiving of bribes; nor does it charge a conspiracy to give or accept bribes."

2. *Gebardi v. United States*, 287 U. S. 112; *United States v. Sager*, 49 F. (2) 725; *United States v. Hagan*, 27 F. S. 813; *United States v. N. Y. C. & H. R. R. Co.*, 146 F. 298; and *United States v. Dietrich*, 126 F. 684.

So also in our case the indictment charges a conspiracy to defraud the United States of and concerning its governmental function to be honestly and faithfully represented in the courts of the United States by an assistant United States attorney, to prosecute delinquents for crimes, free from corruption, dishonesty and improper influence. See also *Miller v. United States*, 24 F. (2) 353; *Cendagarda v. United States*, 64 F. (2) 182; and *Chadwick v. United States*, 141 F. 225.

The appellants also contend that the indictment does not advise them of the nature of the charge against them with reasonable particularity as to the persons, time, place and circumstances. Each of the appellants raises this point in his brief, but no one of them argues the point. To us it seems that the indictment sufficiently apprised the appellants of the charge against them.

We come now to the main question in the case: whether there was sufficient evidence to support the verdict. It is argued by Glasser that there is no evidence whatever that he conspired with anyone for any purpose or that he solicited or received any bribes or that he was influenced in his official decisions. Kretske argues that the testimony tending to connect him with the offense charged, was entirely that of accomplices and therefore does not rest upon a substantial evidential basis. And Roth argues that the case rests on conjecture, suspicion and inference, and that the evidence as to him is wholly consistent with his innocence.

In order to consider the error here assigned, it is imperative that we analyze appellee's evidence in the light of the charge made in the indictment. This we have done.

The trial was long, consuming about 26 days, and the record is voluminous, consisting of the testimony of 106 witnesses and a large number of exhibits. Undoubtedly it would be interesting to detail the evidence at length, but that would unduly lengthen this opinion. We think it will suffice if we but enumerate the more important facts and appellants' connection or association with the suits and matters involved in the conspiracy.

From the record it appears that from March 13, 1935 to June 23, 1939 Glasser was an Assistant United States Attorney and that Kretske was an Assistant United

States Attorney from October 1, 1934 to April 15, 1937, both assigned to the handling of Alcohol Tax Law violations. Horton was a professional bondsman and provided sureties for persons required to give bond involving violation of laws brought against such persons by the United States. He met and spoke frequently with Glasser and Kretske in the United States Court House.

One of the matters involved in the conspiracy related to a Chrysler Sedan. It was a libel action in which it was charged that the automobile, seized upon the premises of one Leo Vitale at Peru, Illinois, had been used in connection with a liquor tax violation. The cause came up for hearing before a District Judge on December 23, 1938. Appellee was represented by Glasser, and Roth represented Rose Vitale, wife of Leo Vitale. Roth informed the trial court that the automobile belonged to Mrs. Vitale and had not been used in the manufacture of alcohol. Thereupon an investigator of the Alcohol Tax Unit, who had caused the seizure, informed Glasser that Roth was not informing the court of the true facts nor advising the court that Vitale had heretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations, and requested that he be permitted to so advise the trial court. Glasser directed the investigator to leave the court room. The trial court ordered that the automobile be returned to Rose Vitale.

Shortly after December 23, 1938 this investigator informed Glasser that he had a number of witnesses to whom Vitale had said that he (Vitale) had "got out of this for \$900" and the investigator suggested that Glasser inquire of Vitale as to who received the \$900. Glasser said he would, but he never did.

Elmer Swanson and Patsy Del Rocco, in the latter part of 1936, were engaged in the illicit manufacture of alcohol at 116 W. 119th Street, Chicago, Illinois. The still was seized by the Government. Within a short time after the seizure Swanson met the defendant Horton, who informed Swanson that Swanson and Del Rocco were going to be indicted, but that he (Horton) could take care of it for \$500 which would be taken down town and given to the boss. He mentioned "Red" as the boss. It is undisputed that Glasser has red hair and is known as "Red." The \$500 was paid to Horton

in currency. Nothing more was heard concerning the seizure of the still after the payment of the \$500 nor were Swanson or Del Rocco indicted.

It further appears that on December 31, 1937, Swanson and the Hodorowicz Brothers operated another still at 6949 Stony Island Avenue, Chicago, Illinois, which also was seized by the Government. Swanson was arrested and arranged for a bail bond through Horton. Roth was retained as an attorney to defend, having been recommended by Kretske, whom Swanson had met at Hodorowicz' hardware store.

Frank Hodorowicz operated a hardware store at 11823 South Michigan Avenue and it was there, early in 1938, that Kretske, Horton, Hodorowicz and Swanson met. Horton introduced Kretske. There it was that Kretske said he would take care of the case; for \$1200 "it was supposed to be fixed up so nobody goes to jail." \$500 in currency was paid to Kretske at his office, the balance to be paid later. At that conversation Kretske said "Don't worry about a thing. Everything will be taken care of." Kretske also said that Glasser was to get part of the money and part was to take care of another lawyer.

The case was placed on Judge Woodward's calendar, Glasser representing the Government and Roth the defendants. On April 28, 1938, on Glasser's motion, the indictment was stricken with leave to reinstate. Swanson paid no money to Roth for his services.

Prior to September 1, 1937 an illegal still was being operated in a garage on 118th Place, Chicago. On September 1, 1937 investigators of the Alcohol Tax Unit raided the garage and arrested Peter Hodorowicz and Clem Dowiat. After the arrest Frank Hodorowicz called upon Kretske and inquired whether Kretske could take care of the case and was told that he (Kretske) "would have to look into it." Kretske told Hodorowicz to return in a few days. On September 23, 1937, Hodorowicz again called upon Kretske and was informed that for \$800, to be delivered to Red, the case could be settled. Hodorowicz gave Kretske \$800. After the money was given to Kretske, Kretske informed Hodorowicz that "Everything is taken care of for to-morrow morning." The next morning Peter Hodorowicz and Clem Dowiat were discharged by the United States Commissioner.

It further appears that on June 3, 1938, Clem Dowiat and Frank and Peter Hodorowicz were indicted, charged with unlawful possession of distilled spirits. Roth was retained to represent the defendants, and while the case was pending in the District Court Frank Hodorowicz and Kretske had a conversation in which Kretske stated that nothing could be done for Hodorowicz because "There is too much heat." Thereafter Frank Hodorowicz called at Glasser's office and complained that he was getting a raw deal to which complaint Glasser replied: "Bailey says he will get my job if I don't put you away" and "all the money in the world . . . can't do you no good this time."

After this conversation Roth's services were dispensed with and other counsel represented the defendants in that case. They were found guilty and on appeal the judgment was affirmed. *United States v. Hodorowicz et al.*, 105 F. (2) 220.

On September 10, 1935, while one Victor Raubunas was conducting a tavern in Chicago, the defendant Kaplan came to the tavern and suggested that Raubunas engage in the illegal manufacture of alcohol, assuring Raubunas that the business would be protected "through the Federal Building" but that it would cost \$1000 to secure the protection. Raubunas gave Kaplan \$1000 and thereafter Raubunas, Kaplan, Adam Widzes and one Ralph Bogush operated a still at 2524 South Western Avenue. On July 2, 1936 investigators of the Alcohol Tax Unit raided the premises and seized the equipment.

During 1936 Kaplan and Raubunas had other transactions involving the illegal manufacture of untaxed spirits and Raubunas made several visits to a garage operated by Kaplan at Kedzie and Ogden Avenues. On one of these visits he saw Kaplan enter an automobile with Kretske and Glasser and drive away with them.

In October or November of 1936 Raubunas, Kaplan, Edward R. Dewes and several other men operated a still, manufacturing alcohol, at Spring Grove, Illinois, until January 1937, when it too was raided by Government officers.

In July, 1937, the Alcohol Tax Unit brought to Glasser's attention the Western Avenue and Spring Grove still violations and requested prosecution. Written reports

containing information implicating Kaplan, Raubunas and others were furnished. Glasser appeared before the grand jury. The grand jury returned a No Bill against Kaplan, Raubunas, Widzes and Bogush in the Western Avenue still.

It further appeared that the Alcohol Tax Unit commenced its investigation of the Spring Grove still on February 10, 1937, a final report being submitted to the District Attorney in July 1937. Between February and July of 1937 several of the investigators held conferences with Glasser regarding the names of possible witnesses and their testimony. Glasser informed one of the investigators that he had heard that Kaplan was a notorious bootlegger and that there was sufficient evidence to obtain his indictment and conviction.

On May 15, 1938, after the defendant Horton had informed Edward R. Dewes that Kretske desired to see Dewes, Horton and Dewes called at Kretske's office. There Kretske advised Dewes that the grand jury was in session, and that if Dewes could raise \$100, he (Dewes) would not be indicted for the Spring Grove still. On May 17, 1938, at Kretske's office in the presence of Horton, Dewes gave Kretske \$100. The money, Kretske said, would be sent over to the red-head.

It further appears that Glasser presented the evidence relative to the Spring Grove still to the grand jury on May 17, 1938 and told the jurors who should be named in the True Bill. Notwithstanding there was evidence implicating Kaplan, Dewes and Raubunas, a No Bill was returned against them.

On August 25, 1938, one Walter Kwiatkowski was arrested while driving an automobile containing untaxpaid alcohol, taken to Glasser's office and charged with unlawful possession of distilled spirits. He was released from custody upon a bail bond furnished by defendant Horton. Prior to the hearing before the United States Commissioner, Horton informed Kwiatkowski that "he could fix the case for \$600." Kwiatkowski withdrew \$3750 from his savings account in a Chicago Bank and gave Horton \$600. The Commissioner dismissed the complaint. Glasser appeared for the Government.

On November 10, 1938 the Treasury Department re-

quested Glasser to present the Kwiatkowski case to the Grand Jury. Glasser took no action in the matter.

In February, 1938, Investigator Thomas Bailey informed Glasser that one Frank Brown, recently convicted of a liquor violation and confined in the Cook County Jail, desired to impart information relative to others implicated in the violation. Brown was brought to Glasser's office and there stated that one Nick Abosketes was connected with the illegal operation of the still upon the Murdock Farm, in Illinois. Shortly thereafter one William M. Brantman from Chicago, called Nick Abosketes over the telephone at Milwaukee, Wisconsin. The following day Abosketes came to Brantman's office in Chicago. Brantman told Abosketes that he had connections with the Federal Building and could stop things, and that Brown had given certain information to the Federal people connecting him with the Murdock Farm still. On April 19, 1938 Abosketes paid Brantman \$3000 in cash, obtaining therefor a receipt in which Brantman stated the money was being paid on account of services. Brantman never rendered any service to Abosketes. Several weeks later Brantman called upon Abosketes at Milwaukee and informed Abosketes that every thing was stopped and under control. The record discloses that the \$3000 was delivered to Kretske.

The record further discloses that on September 30, 1938, Alexander Campbell, an assistant United States Attorney for the Northern District of Indiana, while at his office, at ten o'clock in the evening, in the Federal Building at Fort Wayne, Indiana, was visited by appellant Roth, who inquired whether the Wroblewski brothers had been indicted. He was told by Campbell that because of the absence of his filing clerk he was unable to give Roth the information he desired, but that he would have the files examined the next morning and inform Roth. Roth left the office and Campbell continued with his work for about 15 minutes.

After Campbell left his office that evening he met Roth who stated: "Mr. Campbell, if you find, when you check the records that the Wroblewski's are not indicted, and that their case has not been presented to the Federal Grand Jury, isn't there some way that some arrangement can be made so that they will not be indicted? * * * I know all about Grand Juries. I know how they work. * * * Suppose I raise my fee \$500 or \$1000 and give it to you to handle this case." Upon being told "that is not the way

we operate in the Northern District of Indiana" Roth replied: "Well, that is the way we handle cases in Chicago sometimes."

William and Edward Wroblewski were indicted and convicted on a conspiracy to violate the internal revenue laws of the United States and their conviction was affirmed, *United States v. Wroblewski*, 105 F. (2) 444. Roth represented the defendant in that case.

On July 10, 1939, Roth and Kretske called at Campbell's office and Roth inquired, not however in the presence of Kretske, if Campbell knew Investigator Bailey and then said: "Well, Bailey is conducting some sort of investigation in Chicago, he is trying to involve a lot of Chicago people, he is trying to involve certain lawyers in Chicago, . . . Can't you pull Bailey off? . . . I don't want to get mixed up in this investigation, . . . It will be a mess, . . ."

The appellants denied all of the incriminating evidence and each adduced testimony that his reputation as a law abiding citizen was good. In addition, Glasser presented the testimony of several of the Judges of the District Court, who testified to specific acts of and conversations with Glasser and representatives of the Alcohol Tax Unit and stated that so far as they could observe he rendered the Government conscientious service.

It is upon this state of the record that we are asked to hold that there was not sufficient evidence to support the verdict.

In considering this contention of the appellants it is well to remember that in passing upon the sufficiency of the evidence, we cannot weigh or determine the credibility of witnesses. We must take that view of the evidence most favorable to the party against whom it is directed and sustain the verdict if there be substantial evidence to support it.

A conspiracy is an offense which is usually established by a great number of apparently disconnected circumstances which, when taken together, throw light on whether the accused have an understanding or are in common agreement. The agreement need not be in any particular form. It is sufficient that the minds of the parties met understandingly. A mutual implied understanding is sufficient so far as the combination or confederacy is concerned. The

agreement is generally a matter of inference, deduced from the acts of the persons accused, which are done in pursuance of an apparent criminal purpose, that is to say, it is not necessary that the participation of the accused be shown by direct evidence. The connection may be inferred from such facts and circumstances in evidence as legitimately tend to sustain that inference.³ This is so because it is rarely capable of proof by direct evidence.

In our case it was the province of the jury to consider the following noteworthy and expressive circumstances and the reasonable inferences that follow therefrom. (1) The relations existing between Glasser and Kretske while employed as assistant United States District Attorneys and after Kretske's separation from the service. (2) The relations between Kretske and Roth and Roth's employment in liquor violations upon Kretske's recommendation. (3) The relations between Glasser, Kretske, Horton and Kaplan. (4) The knowledge that Horton had concerning the proposed indictment of Swanson and Del Rocco; the payment of \$500 to Horton; and the failure to indict Swanson and Del Rocco. (5) The meeting of Kretske at Hodorowicz's store; the recommendation of Roth as attorney to defend; the payment of currency to Kretske; the statement of Kretske "not to worry, everything will be taken care of;" Glasser to receive part of the money; and the striking of the indictment. (6) The payment of \$800 by Frank Hodorowicz to Kretske to be delivered to Red; Kretske's statement "Everything is taken care of for tomorrow morning;" and the discharge of the violators the next morning. (7) The indictment of Dowiat, Frank and Peter Hodorowicz; the retaining of Roth to defend; and his discharge after Hodorowicz was told by Glasser that "all the money in the world could do him no good this time." (8) The relations between Raubunas and Kaplan and between Kaplan, Kretske and Glasser. (9) Glasser's conduct and actions relative to Raubunas, Kaplan and Dewes concerning the Western Avenue and Spring Grove stills. (10) Glasser's actions and conduct concerning Brown and Abosketes; and the payment of \$3000 by Abosketes to Brantman and by Brantman to Kretske. (11) The conduct and statements of Roth in the Wroblewski case.

3. *Gerard v. United States*, 61 F. (2) 872; *United States v. Wroblewski*, 105 F. (2) 444; *Goode v. United States*, 58 F. (2) 105; *Feigenbutz v. United States*, 65 F. (2) 122 and *United States v. Manton*, 107 F. (2) 834.

True it is, that if the evidence is as consistent with the innocence of the appellants as with their guilt, no conviction can be had. It is equally true that overt acts of the parties may be considered with other evidence and attending circumstances in determining whether a conspiracy exists. Where the overt acts are of a character that are usually, if not necessarily, done pursuant to a previous scheme and plan, proofs of the acts has a tendency to show such pre-existing conspiracy, so that when proven they may be considered as evidence of the conspiracy charged, and if the established facts and inescapable inferences are inconsistent with the accused's professions of innocence, it becomes the problem of the jury to weigh the evidence and determine, under proper instructions dealing with the *quantum* of proof necessary to convict, the guilt or innocence of the accused.

And so in this case it was proper for the jury to consider all of the evidence, and from all the facts and circumstances including those above enumerated to determine what witnesses it believed or did not believe, and to say whether the conspiracy charged in the indictment had been established beyond a reasonable doubt. This the jury has done, rendering a verdict against the appellants. We have considered this record and are compelled to the conclusion that the verdict is supported by substantial evidence.

It is next urged that the trial court erred in overruling Kretske's motion for a continuance and in appointing Glasser's attorney to represent Kretske. The record discloses that the case proceeded to trial on February 5, 1940. On November 2, 1939 attorneys Harrington and McDonnell entered their appearance as attorneys for Kretske. The case was set for trial to commence January 29, 1940. On that day Mr. Harrington appeared before the court and stated that he was engaged in a trial of a case in an Illinois State Court. The court thereupon continued the case to February 5, 1940 and stated that the cause would have to proceed to trial on that date, and that Mr. Harrington's office would have to take care of Kretske's defense or Kretske would have to retain other counsel.

On February 5, 1940, Mr. Harrington not appearing, a motion for a continuance was made and denied and Mr. McDonnell was directed to act for Kretske until Mr. Harrington's arrival. Thereupon Kretske stated that he had just spoken to Mr. Stewart and if the court would appoint

him, he would act as Kretske's attorney. Glasser objected to the appointment of Mr. Stewart. Notwithstanding Glasser's objection Mr. Stewart accepted the appointment and thereafter represented both Kretske and Glasser throughout the trial.

The action of the trial court upon an application for a continuance is purely a matter of discretion, and not subject to review unless it be clearly shown that such discretion has been abused. We cannot say, under the circumstances, the trial court abused that discretion, nor can we say that the appointment of Mr. Stewart and his acceptance of the appointment as attorney for Kretske was such an error as to warrant a reversal.

Appellant Roth next argues that the District Court abused its discretion in denying him a severance. In his petition for a severance Roth alleges that evidence of solicitations and promises would be introduced as well as conversations between the other defendants and various persons with which he had no connection, all of which would prejudice him before the jury. We are unable to hold that in denying a severance there was an abuse of discretion. Moreover, Roth could not successfully demand a separate trial because an unfavorable atmosphere might be created by the presence on the trial of co-defendants. *McDonald v. United States*, 89 F. (2) 128.

We come next to the contention that error was committed in admitting Exhibits 81a and 113. These exhibits are reports of the Alcohol Tax Unit. Exhibit 81a pertains to Raubunas, Kaplan and others relative to the Western Avenue still and Exhibit 113 refers to the Spring Grove still.

These reports contained information which the investigators obtained regarding the stills. It is said they were inadmissible because they contained hearsay information, referred to Kaplan as of Jewish descent and made mention that Kaplan and Dewes had been arrested in connection with the killing of one Tony Pinna at Kaplan's garage. (The cross-examination of Dewes by counsel for Glasser and Kretske established the fact that a man had been killed by Dewes in protecting Kaplan from kidnapers.) In addition Glasser makes the point that Exhibit 113 was inadmissible because the Spring Grove still case was presented to the grand jury.

The information concerning the nature of the violations

and the names and history of the alleged violators enabled the assistant United States Attorney in charge of the cases to have completed information concerning the conduct and history of the alleged offenders, and brought to Glasser's attention information for him to either act or not act upon. The information contained in the reports together with Glasser's conduct in these cases threw light upon the question whether the United States was being deprived of the honest and conscientious services of an assistant United States Attorney. We do not think that the mere fact that the racial descent of Kaplan was mentioned in the report was prejudicial. Besides, as the record indicates, the trial court, at the time the Exhibits were received in evidence, instructed the jury that the contents of the reports were not evidence against Roth and Kretske. For these reasons we think the contention is not tenable.

It is also claimed that the trial court sent to the jury Exhibits 92 and 115. Counsel for appellee however say they were not sent to the jury. In the trial of the case some 230 exhibits were offered by the parties. The bill of exceptions discloses that when these exhibits were offered in evidence, objection to their introduction was made and sustained. It also discloses that immediately after the defendants rested their case, the Government offered a large number of exhibits in bulk and mention is made of exhibit 92. There appears to have been no objection to the introduction of these exhibits. It also appears that on May 17, 1940 the trial court entered an order directing the Clerk of the District Court to certify and send to this court all of the exhibits introduced on behalf of the parties. The Clerk of the District Court, in so certifying, does not certify that exhibit 92 was sent to the jury. From the record thus appearing we are unable to say that these exhibits were sent to the jury.

We now consider appellants' contention that the court erred in permitting appellee to introduce evidence concerning Investigator Bailey. It appears that Roth in his direct examination, over Glasser's objection, testified that Glasser had heard that Bailey had been ordered from a court room by a Federal Judge for misconduct in preparation of cases. Upon the cross-examination of Glasser he was asked if it was true that he had told Roth that Bailey had been run out of a Federal court room. No objection

having been made to the question, he answered that he had so stated.

In rebuttal Bailey was permitted to testify that he had never been ordered out of any court room.

It is not permissible, under the guise of testing the credibility of a defendant, to question him on cross-examination about matters not touched upon in the examination in chief nor pertinent thereto, not tending to prove the charge upon which the defendant is being charged, *Gideon v. United States*, 52 F. (2) 427. Nevertheless, under the state of the record here appearing it was within the discretion of the trial court to allow this testimony in rebuttal and we cannot say that his conduct in this regard warrants reversal.

Next we are confronted with an argument made by appellant Glasser that the trial court erred in unduly restricting cross-examination of appellee's witness William J. Campbell. It appears that Glasser on direct examination had testified that Mr. Campbell, who was then the United States Attorney for the Northern District of Illinois, had said to Glasser that he would tell the grand jury there was nothing in his (Glasser's) official conduct that would require investigation. Mr. Campbell, when called as a witness in rebuttal, was asked if he had made the following statement, theretofore testified to by Glasser: "Dan, I knew you were going in to the grand jury room this morning and I thought I would go in and put in a good word for you. I wanted to tell that grand jury there was nothing in your official conduct that would require investigation," and Mr. Campbell answered "I did not." Thereupon the trial court ruled that cross-examination of Mr. Campbell would be limited to the subject of his examination in chief. The general rule is that cross-examination should be confined to what was brought out on direct examination, but it is permissible in a proper case, on cross-examination, to ask an interested or hostile witness concerning acts or declarations showing bias and prejudice for the purpose of affecting the credibility of the witness. In such matters large discretion is committed to the trial judge in controlling the cross-examination and great latitude is permissible. We believe the ruling of the court in this case was not reversible error.

The next contention to which we will devote ourselves, is

that the District Court erred in permitting the introduction of evidence concerning overt acts not mentioned in the bill of particulars.

The object of a bill of particulars is to give the defendant notice of the specific charges against him and to inform him of the particular transactions in question, so that he may be prepared to make his defense. Its effect, therefore, is to limit the evidence to the transactions set out in the bill of particulars. The prosecution, however, is not required to specify in the bill all the evidence it will produce in support of the charges, *McDonald v. People*, 126 Ill. 150 and *People v. Westrup*, 372 Ill. 517, and it is competent, when the issue is whether the accused is guilty of a general conspiracy, to prove distinct overt acts in anyway connected with the conspiracy charged, *McDonald v. People, supra*, page 162. In our case appellants assert that the bill of particulars made no reference to the "One Chrysler Sedan" and the Edward and William Wroblewski case in the Northern District of Indiana. Our examination of the bill of particulars convinces us that sufficient appears therein to apprise the appellants that a proffer of evidence would be made concerning Leo Vitale, and we believe that it was competent, under the issues, to prove Roth's conduct in the Edward and William Wroblewski case. Furthermore, in the order directing the appellee to file a bill of particulars, appellee reserved the right to offer additional evidence.

Appellant Kretske also makes the point that "the testimony tending to connect the appellant with the offense charged in the indictment was entirely of accomplices, * * * and that there was no corroboration * * * of the character required by law * * *." With this statement we cannot agree for the reason that there were corroborating witnesses of respectability whose testimony tended to establish the truth of the charge in the indictment. It is true, however, that much of the evidence tending to show Kretske's connection with the conspiracy came from the lips of professional still operators, bootleggers and illegal alcohol dealers, all of whom were either inmates of a Federal penitentiary, indicated for crimes for which they have not yet been prosecuted, or prosecuted and convicted and asking for probation. Nevertheless, as was said in the *Manton* case, *supra*, page 843: "Indeed, in a case like this, it is unlikely that it would be otherwise." However that may be, the rule is that although the testimony of an accomplice should

be subjected to close scrutiny and minute examination and weighed with great care and caution and although it may be attacked before the jury as incredible, unworthy of belief and prompted by unworthy motives; still a conviction may rest upon the uncorroborated testimony of an accomplice.⁴ Since the record here does not disclose the trial court's instructions to the jury, we must assume that the trial court directed the jury that the testimony of the accomplices must be minutely examined and weighed with great caution. *Kanner v. United States*, 34 F. (2) 863.

It is insisted that it was error to admit the testimony of Alexander Campbell, and the argument is made that his testimony was incompetent as not being a declaration in furtherance of a conspiracy to defraud the United States of the conscientious services of Glasser. To be sure, evidence which has little or no bearing on the charge against an accused is not to be admitted when it shows guilt of an independent crime, but evidence which tends to prove an issue material in a prosecution is not made inadmissible simply because it indicates in some way that a defendant has been accused of another crime. In our case we do not think reversible error was committed by the trial court in ruling on this evidence, for the reason that it is discretionary on the part of a trial judge to allow testimony which tends to throw light upon a particular fact, explain the conduct of a particular person, or to show his purpose, knowledge or design.⁵

Complaint is made and counsel for appellants earnestly argue that numerous prejudicial violations of their rights were committed by the assistant District Attorneys and that by reason thereof they were deprived of a fair and impartial trial.

It is argued: (1) That the prosecutor caused the witness Elmer Swanson to change his testimony from the statement that the case was supposed to be taken care of for \$800 to the statement that \$500 was paid to Kretske and that there was still a balance of \$700 to be paid. (2) That

4. *Arnold v. United States*, 94 F. (2) 499, 501; *Wolf v. United States*, 283 F. 885; *Delvalley v. United States*, 88 F. (2) 579, 581; *Reuben v. United States*, 86 F. (2) 464; and *People v. Kendall*, 357 Ill. 448.

5. *Butler v. United States*, 53 F. (2) 800; *Simpkins v. United States*, 78 F. (2) 594; *United States v. Pleva*, 66 F. (2) 529; *Farmer v. United States*, 223 F. 903; *United States v. Sebo*, 101 F. (2) 889; *Devoe v. U. S.*, 103 F. (2) 584; *Witters v. U. S.*, 106 F. (2) 837.

the witness Dewes was caused to repeat the injurious testimony that Kretske said that he (Kretske) had to resign under pressure and for resigning Kretske was to be able to take care of cases. The record discloses that after the witness had testified as above noted the following occurred:

Mr. McGreal (Assistant United States Attorney):

Q. Repeat that, what was that? A. He said he resigned.

Mr. Stewart: There is nothing wrong with our hearing. We all heard it, Judge. We heard it in the opening statement, now we hear it here.

The Court: Let us hear it once more. Repeat the answer.

The Witness: A. He said he resigned under pressure over here, and for holding the bag he was to receive favors over here.

(3) That the name of one Steve Schiavone, a bootlegger by reputation, was brought into the case for the purpose of prejudicing the jury. It appears that one of the overt acts mentioned in the bill of particulars related to the case of *United States v. William J. Workman* and 32 others. Workman, called as a witness for the appellee, testified that he was the owner of a warehouse in Chicago which he had rented to one Mathews, but that the rent had been paid in cash by one Steve Schiavone, one of the 32 mentioned in the indictment. The witness identified Schiavone from a picture shown to him in open court and offered in evidence as an exhibit. Our examination of the record does not disclose that either of the appellants objected to this testimony.

In support of this contention, counsel cite and place reliance upon *United States v. Minuse*, 114 F. (2) 36. In that case the defendants had been indicted for conspiracy to violate the provisions of the Securities Exchange Act of 1934, 15 U. S. C. A. One Frezise, cashier of a bank, called as a witness by the Government, was permitted to testify regarding his defalcations in the bank. The reviewing court was of the opinion that such testimony threw no light upon the issues, and reversed the conviction. It is obvious, under the circumstances in the instant case, that that case is not in point. (4) That a photograph or picture of one Nick Gerardi was improperly admitted in evidence. It appears that in January, 1938, government officials raided and

seized a still at 6309 Eggleston Avenue, Chicago, and arrested Tony Jurkas. Following the arrest Mae Jurkas, wife of Tony Jurkas, visited Glasser at his office and told him that Nick Gerardi was the owner of the still. Mae Jurkas was called as a witness for the appellee and after relating her conversations with Glasser she identified a picture of Nick Gerardi as being the man to whom she had referred. On the back of this photograph appears the following: "Remarks" "Auto thief; counterfeiter; small scar back left hand; round face; married; wife's name Congetta." It further appears that Glasser took no action concerning the alleged illegal operation of the still at 6309 Eggleston Avenue. Now, appellant argues that it was reversible error to introduce and send to the jury this photograph, and *United States v. Dressler*, 112 F. (2) 973 is cited. We are of the opinion that the *Dressler* case is not in point, for the reason that the admission of the cards carrying the criminal history therein was that of the defendant while in our case it concerns a third party. Moreover, it does not appear that any objection was made to the introduction of the photograph.

We have not discussed all of the complaints mentioned in the briefs under this contention. However we have examined and considered all of them and conclude that neither those specifically above noted nor the others not discussed, warrant a reversal.

Considerable criticism is heaped upon the court in the conduct of the trial. The claim is made: (1) That the trial judge committed acts of advocacy advantageous to the appellee and injurious to appellants; (2) That he cross-examined Glasser in a hostile manner; (3) That he restricted cross-examination of appellee witnesses; and (4) That he made remarks favorable to appellee and prejudicial to appellants.

It is of course the duty of the trial judge to conduct the trial in an orderly way with a view to eliciting the truth and to attaining justice between the parties, and in so doing he has the authority to interrogate witnesses, *Kettenback v. United States*, 202 F. 377, 385. We agree with Judge Sanborn that:

"It is not always possible during the trial of a hotly contested case for a judge, however impartial he may be, to maintain in the courtroom that atmosphere of complete judicial calm which is so much to be desired.

We will not overlook the fact that the human element cannot be entirely eliminated in the trial of a law suit. While a counsel owes to the court, because of the position which he occupies, the utmost deference and respect, and while the court owes to them an equal obligation of courtesy and patience and consideration, nevertheless, sharp differences of opinion do arise in the heat of trial and things are said which are better left unsaid. Such incidents are often regarded as trivial in the trial of a case and are quickly lost sight of, but when set forth in the record and emphasized by counsel on appeal, they take on an importance which they never actually possessed. * * * An appellate court should be slow to reverse a case for the alleged misconduct of the trial court, unless it appears the conduct complained of was intended or calculated to disparage the defendant in the eyes of the jury and to prevent the jury from exercising an impartial judgment on the merits." *Goldstein v. United States*, 63 F. (2) 609.

Whatever our personal desires might be, we are compelled to say that space does not permit us—nor would it serve any good purpose—to discuss in detail the instances claimed to be prejudicial. Suffice it to say without further elaboration that we have examined every criticism made, considered them in connection with the entire record, and are satisfied that the complaints are of minor importance. They did not affect the substantial rights of the appellants, nor prevent the jury from exercising an impartial judgment on the merits.

Finally, it is argued that the court erred in overruling the motion for a new trial. In their briefs appellants concede that the disposition of such a motion rests within the sound discretion of the trial judge, and that his ruling in granting or overruling a motion for a new trial is not subject to review by this court except for clear abuse of discretion. But they insist that the record discloses the District Court did abuse that discretion and they base their argument upon the fact that Glasser and Roth filed affidavits, alleging in substance that all the female names placed in the box from which jurors are selected were presented to the clerk of the court from a list made up by the Illinois Women Voters league to the exclusion of all other females; that the females selected by said league had attended jury classes maintained for the purpose of giving instructions to po-

tential jurors; that lectures before the jury classes presented the views of the prosecution; and that females otherwise qualified and eligible for jury service were deliberately excluded from the box. It was also alleged that the affiants acquired knowledge of these facts after the verdict. Roth filed a second affidavit in which he alleged that one of the jurors was ill during the deliberations and about midnight requested that he be allowed to retire and that his request was denied.

In the instant case the trial court in passing upon the motion for a new trial did consider the affidavits filed and was convinced that the appellants were in no wise prejudiced by the incidents complained of. Under such circumstances we cannot say that the District Court had abused the discretion vested in it by law. *Smith v. United States*, 231 F. 25 and *N G Sing v. United States*, 8 F. (2) 919.

We have now considered all of the assignments of error, and we are convinced that no error has intervened justifying a reversal. The judgments of the District Court will therefore be affirmed.

Endorsed: Filed Dec. 13, 1940. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the thirteenth day of December, 1940, the following further proceedings were had and entered of record, to-wit:

Friday, December 13, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

7315	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Daniel D. Glasser, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, East- ern Division.
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This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration, whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

7316	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Norton I. Kretske, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
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This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration, whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

7317	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Alfred E. Roth, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
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This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration, whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And afterwards, to-wit: On the twenty-fourth day of December, 1940, in cause No. 7315, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is in the words and figures following, to-wit:

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

DANIEL D. GLASSER,
Defendant-Appellant.

PETITION FOR REHEARING.

JOHN ELLIOTT BYRNE.
Attorney for Petitioner.

DANIEL D. GLASSER,
Petitioner, Pro se.

U. S. C. C. A. -7.
FILED

DEC 24 1940

United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>	}
vs.	
DANIEL D. GLASSER, <i>Defendant-Appellant.</i>	

PETITION FOR REHEARING.

We regret the necessity of presenting to this court so lengthy a petition for rehearing, but feel that this course is necessary in justice to Appellant Glasser. The general situation here seems to us to be quite similar to that in the case of *U. S. v. Haim*, 114 Fed. 2nd, 566, 2d Circuit. In that case a conviction of Haim for conspiracy had been affirmed in the Appellate Court's original decision, but on petition for rehearing the judgments of conviction were reversed because in petition for rehearing certain significant evidence was shown to have been misapprehended by the Court of Appeals.

Your petitioner, Daniel D. Glasser, presents this, his petition, for rehearing of said cause and respectfully submits to the court that, after a most careful study of the opinion of the court, Appellant Glasser is impelled to the conclusion that certain important and material matters in the record respecting the proceedings before trial have been overlooked by the court, and that certain important and material facts at the trial have been overlooked and

misapprehended in the opinion, and that the application of the law to the case in certain important respects has not been correctly made in the opinion, and that vital and material propositions necessary to a correct decision were not considered in the opinion.

This appellant, Glasser will not burden the court with arguments with respect to all of our contentions but, without waiving our position with respect to those propositions not covered herein, we ask leave to discuss in this petition some of the matters with respect to which we believe brief discussion will persuade the court to grant a rehearing. Petitioner, therefore, respectfully petitions for a hearing of said cause, and in support of said petition respectfully shows the following:

**The Record Fails to Show the Jurisdictional Requirement
That the Indictment Was Returned in Open Court.**

The opinion of this court (page 3) states that the record of the clerk of the District Court shows that the Grand Jury returned four indictments in open court. The opinion overlooks the fact that this entry carries the additional words "added 10-30-39." (Tr. 39.) Evidently, therefore, the notation of the return of the indictments in open court was made by some unidentified person who did not set forth on the record what authority, if any, he had for making this notation which, it is clear, was made some 30 or 31 days after the actual filing of the indictment and after the Grand Jury had been finally discharged.

It is apparent from the above facts that the indictment was filed in court on September 29, 1939, but that no record was made on the court's records purporting to show a valid return of the indictment in open court until about 30 days thereafter. This manifestly does not furnish the jurisdictional evidence as to return of the indictment in open court which the law requires under the authorities universally recognized.

THE EVIDENCE.

The opinion of the court here indicates a careful effort by the court to analyze the evidence of the Government. This portion of the opinion furnished Appellant Glasser for the first time in the entire history of the case with a concise and clear-cut statement as to matters which it is thought indicate his guilt Appellant Glasser appreciates this review of the evidence by the court and accepts that review as containing a description of such matters as the court deems to weigh against Glasser. However, whether because of lack of clarity in the briefs of the Government or Appellant Glasser or both, the opinion does not in all respects correctly state all the pertinent evidence in the review therein contained. We, therefore, ask leave to set forth a correct description of the evidence as to the matters mentioned in the court's opinion, feeling assured that by so doing we can persuade the court of the justice of Appellant Glasser's contention that there is no evidence of his guilt. In this discussion we shall limit ourselves, as the court has done, to the evidence of the Government, with, however, occasional reference to such portions of Appellant Glasser's evidence as was not disputed at the trial.

The Chrysler Sedan Libel Case.

The opinion states:

"One of the matters involved in the conspiracy related to a Chrysler Sedan. It was a libel action in which it was charged that the automobile, seized upon the premises of one Leo Vitale at Peru, Illinois, had been in use in connection with a liquor tax violation. The cause came up for hearing before a District Judge on December 23, 1938. Appellee was represented by Glasser, and Roth represented Rose Vitale, wife of Leo Vitale. Roth informed the trial court that the automobile belonged to Mrs. Vitale and had not been

used in the manufacture of alcohol. Thereupon an investigator of the Alcohol Tax Unit, who had caused the seizure, informed Glasser that Roth was not informing the court of the true facts nor advising the court that Vitale had theretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations, and requested that he be permitted to so advise the trial court. Glasser directed the investigator to leave the courtroom. The trial court ordered that the automobile be returned to Rose Vitale."

The court's statement that the investigator "informed Glasser that Roth had not informed the court of the true facts nor advising the court that Vitale had theretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations and requested that he be permitted to so advise the trial court implies: 1. That Dowd's alleged statement to Glasser was correct. 2. That Dowd had competent testimony which would supply the alleged deficiencies in the presentation of the case.

The first implication mentioned is not a logical one inasmuch as the facts relied upon the Alcohol Tax Unit for forfeiture of the automobile were that the car was seized in a private garage immediately behind a residence building in which an illicit distillery had been located and that there were marks in the rear compartment of the automobile indicating where heavy cans, (supposedly containing alcohol), had been placed in the past. It is not disputed that these facts were placed before Judge Barnes by Mr. Glasser by reading of the Alcohol Tax Unit statement to that effect. Evidently, Mr. Glasser also informed Judge Barnes of the identity of Leo Vitale, inasmuch as Judge Barnes said (Tr. 717) "I remember that case, the claimant was the wife of a bootlegger."

The second implication in the court's opinion, namely, that Dowd could have testified to matters justifying the

forfeiture of the automobile, in addition to those set forth in the Alcohol Tax Unit statement, is not supported by the record. The statements on page 219 of the record by Dowd to the effect "This car was used to haul the sugar from a warehouse to the building where the distillery was. It was also used for hauling his associates, bootleggers, around different parts of the country. It was also used in trailing carloads of alcohol from La Salle County down to Springfield, Ill.," were entirely conclusions and suspicions of Dowd as to which he was not a competent witness. Dowd never claimed or reported that he could testify competently to such matters. Unfortunately, Glasser's counsel at the trial did not object to this statement of hearsay and conclusions by Dowd, but we believe that this court in justice to Glasser will not insist upon objection in this instance where the matter is so vital to appellant.

It, therefore, clearly appears, we respectfully submit, that the trial of the Chrysler Sedan Case was properly conducted by Glasser. that he placed before the court, Judge Barnes, all pertinent and proper evidence given him by the Alcohol Tax Unit. As a matter of fact, the record indicates that Glasser got before Judge Barnes some information not strictly competent, namely, that Leo Vitale was a bootlegger. Certainly we submit, it would have been improper and a violation of the laws of evidence for Glasser to have attempted to introduce evidence of other disconnected violations of law or convictions of Vitale in presenting this Automobile Libel Case.

We, therefore, respectfully submit that the matter of the trial of the Chrysler Sedan case furnishes no evidence inconsistent with Glasser's innocence.

Statement of Investigator Dowd That Vitale Said He "Got Out of This for \$900."

The statement in the opinion that "the investigator suggested that Glasser inquired of Vitale as to who received the \$900. Glasser said he would, but he never did," seems to give Dowd's testimony a meaning which it did not have. Dowd's testimony, (R. 221) "I said, 'let us bring him in and see who got those \$900.' He said he would." To this appellant this means that Dowd requested permission from Glasser to bring Leo Vitale before Glasser and that Glasser gave Dowd the desired permission. By "us" Dowd evidently meant himself and other investigators in the Alcohol Tax Unit. By the words "He said he would," evidently is meant that Glasser said he would let the Alcohol Tax Unit bring Vitale in and see who got those \$900. It should be remembered that Dowd was the investigator charged with the duty of obtaining evidence, while Glasser was not an investigator nor charged with such duty, but the duty of presenting in court such competent evidence as was obtained by Dowd and other investigators of the Alcohol Tax Unit.

Moreover, consideration of this alleged incident shows its superficial nature and absence of proof against Glasser. If any money was paid by Vitale to any of the defendants in the case, certainly the extensive investigation conducted by the Government in this case would have resulted in the production by the Government of either Leo Vitale or some other witness to testify to some fact in this regard. It is clear that Dowd himself placed no credence in the rumor for Dowd never again called the matter to Glasser's attention, nor did he make a written report of it, so far as the record discloses, to any official or department of the Government. In his testimony at Glasser's trial, Dowd gave the name of no person who could substantiate the alleged story, neither were any such persons called to testify in

the case at bar. It, therefore, clearly appears, we respectfully submit, that there cannot be even a suspicion that Glasser received any of the alleged \$900 and that the alleged incident is entirely without bearing upon his guilt or innocence.

Elmer Swanson and Patsy Del Rocco Matter.

The opinion says:

Elmer Swanson and Patsy Del Rocco, in the latter part of 1936, were engaged in the illicit manufacture of alcohol at 116 W. 119th Street, Chicago, Illinois. The still was seized by the Government. Within a short time after the seizure Swanson met the defendant, Horton, who informed Swanson that Swanson and Del Rocco were going to be indicted, but that he (Horton) could take care of it for \$500, which would be taken down town and be given to the boss. He mentioned "Red" as the boss. It is undisputed that Glasser had red hair and is known as "Red." The \$500 was paid to Horton in currency. Nothing more was heard concerning the seizure of the still after the payment of the \$500, nor were Swanson and Del Rocco indicted.

The opinion of the court here seems to assume that Glasser conveyed to Horton Glasser's supposed knowledge of the implication of Swanson and Del Rocco with the still. This assumption is not supported by the record. There was no testimony by any investigator or anyone else that he informed Glasser at the time that Swanson and Del Rocco were involved in the operation of this still. Neither was there any report by the investigators of such complicity of these parties. It must, therefore, be concluded that if Horton told Swanson and Del Rocco that he knew of their implication in this still, his information was received from some one other than Glasser, as it is clear that at the time of the conversation in question Glasser had no knowledge of their connection with this still.

It is important to note that this still was not discovered

by investigation but as the result of a fire. No arrests were made at the time. Swanson correctly testified that a prosecutor has no knowledge of an offense until it is presented to him by the investigator. (Tr. 240).

We respectfully submit that this transaction furnishes no evidence of any lack of conscientious performance of duty by Glasser, much less any evidence tending to indicate guilt.

The Still at 6949 Stony Island Avenue, Chicago.

The opinion says:

It further appears that on December 31, 1937, Swanson and the Hodorowicz Brothers operated another still at 6949 Stony Island Avenue, Chicago, Illinois, which also was seized by the Government. Swanson was arrested and arranged for a bailbond through Horton. Roth was retained as an attorney to defend, having been recommended by Kretske, whom Swanson had met at Hodorowicz' hardware store.

Frank Hodorowicz operated a hardware store at 11823 South Michigan Avenue and it was there, early in 1938, that Kretske, Horton, Hodorowicz and Swanson met. Horton introduced Kretske. There it was that Kretske said he would take care of the case for \$1,200. "It was supposed to be fixed up so nobody goes to jail." \$500 in currency was paid to Kretske at his office, the balance to be paid later. At that conversation Kretske said: "Don't worry about a thing. Everything will be taken care of." Kretske also said that Glasser was to get part of the money and part was to take care of another lawyer.

The case was placed on Judge Woodward's calendar. Glasser representing the Government and Roth the defendant. On April 28, 1938, on Glasser's motion, the indictment was stricken with leave to reinstate. Swanson paid no money to Roth for his services.

The testimony of the bootleggers in relation to the above case was given by Frank Hodorowicz (Tr. 298), Anthony Hodorowicz (Tr. 344), Clem Dowiat (Tr. 273-274), Elmer Swanson (Tr. 227, 228-229, and 230), and Christ Del Rocco (Tr. 244-245).

A thorough study of the testimony of each of the above witnesses with respect to this case, we contend, will demonstrate the extreme effort of the prosecution to lead the witnesses into testimony implicating Glasser.

Frank Hodorowicz, Anthony Hodorowicz, and Clem Dowiat did not mention Glasser's name in this connection. Indeed, Frank Hodorowicz testified that Kretske did not tell him to whom he intended giving the money.

At (Tr. 230) Swanson, under the leading and suggestive questions of Mr. Ward, testified:

Mr. Ward: Q. Would it refresh your recollection if I was to tell you that Kreske said "Don't worry about a thing. Everything will be taken care of?"

A. Yes, that was said.

Q. And Dan was to get part of the money that was given him?

A. Well, I don't know if he said Dan or Red, or something like that, either one.

Q. Either what?

A. Either one, Red or Dan.

Q. Didn't you know at that time who Kretske was referring to as Red?

A. Yes.

Q. Who?

A. Well, it was Glasser.

Del Rocco testified (Tr. 244-245) under leading interrogation, as follows:

Q. Was anything said about what Kretske was going to do with the money?

A. Yes, he would get the money and take care of another lawyer. He was going to represent Elmer and Tony Hodorowicz.

Q. Was anything said about what he was going to do with the money other than that?

A. Split it up.

Q. With whom?

A. Well, he had to take care of somebody, that was none of our business, that was his.

Q. When Mr. Kretske told you the heat was on, did he say the heat was on the red-head? and he guessed it was hard for it to be carried out?

Mr. Stewart: I object, Your Honor, that is unfair.
The Court: It is leading. Objection sustained.

Mr. Ward: Q. Do you recall anything else that was said?

A. The heat was on the red-head.

Q. Are you sure he said that?

The Witness: At that time I didn't know Mr. Glasser.

Q. Did you know who he meant?

A. (Answer inaudible).

The narration of the facts in the opinion of the court seems to indicate that the Appellate Court felt that the striking of the case with leave to reinstate was caused by the payment of money to Mr. Glasser. Such was not the fact as established by uncontradicted evidence. The case was stricken at the request of Investigator in Charge Ritter, who evidently exercised close personal supervision over it. This testimony was given by Glasser and inasmuch as it was not denied by Mr. Ritter, who did not take the stand as a witness, we respectfully submit that Glasser's testimony on this point must be considered conclusive. Glasser's testimony (Tr. 918-921) as follows:

Q. Now there has a case been mentioned here concerning Swanson which involved a Stony Island still. You will remember it, when I refer to it as a case where Mr. Roth had a diagram and they were preparing for a trial and Swanson was a defendant and one of the Hodorowicz and Clem Dowiat, do you remember that case?

A. Well, I never saw the diagram before we take it to court here, but I remember the case pretty well.

Well, that case I O. K.'d the complaint before the Commissioner. I don't remember Bailey being in the Commissioner's office, although I suppose he was because he says he was. But I do remember Mr. Ritter. Mr. Ritter was the man with whom I had most of my contacts. Mr. Ritter is the investigator in charge of the agents of the Alcohol Tax Unit and he was there in the Commissioner's courtroom on the day set for the hearing of the case you are asking me about. And he came to me and he said, "I don't think we have got enough evidence here to win this case," and I said,

"Well I don't want to lose this case. This is one of those Hodorowicz cases, I don't want to lose this case," I said, and "I don't know what I am going to do." He said, "Why don't you go in and ask the Commissioner to continue the case and in the meantime I am sure we can get more evidence." So I said, "All right." He said: "We can present it to the Grand Jury if we don't get any more," and I said: "No, I don't think I would like to do that, if we haven't got the evidence, I don't want to proceed." He said: "Well, get the continuance." So I went in before the Commissioner and I asked for the continuance.

After the continuance was granted, another date was set. Before that date arrived, Mr. Ritter came over to see me and we discussed the case and we decided, Ritter and I, that the matter ought to be presented to the Grand Jury, and we did present it to the Grand Jury. The Grand Jury voted a true bill.

He said: "Now when we get this indictment, if we have not got sufficient evidence to convict these people we can continue it generally because we can get it." He said: "I am sure we can get it." And I said: "All right." We presented it to the Grand Jury and the Grand Jury indicted them and we went before the Commissioner and dismissed our case, the case was pending before the District Court and we came in before the Judge to whom it was assigned, and I think Roth was there. I don't remember, but anyway, on the plea in arrignment day it was put over. I don't remember what order was entered on that date, but I put it over and subsequently I had another conversation with Ritter and I said: "Now this day for trial is rapidly approaching and I don't see this conclusive evidence that you talked about so much." He said: "Well, why don't you strike it off." So I struck it off.

I did not, before I struck that case off, communicate my intentions to Mr. Roth, or anybody outside of my office. I probably should have, but I didn't, and I had a conversation with Mr. Ritter about that because the date the jury was being picked in this courtroom I said: "Ritter, you know what I did in that Swanson

case." I said: "I did it at your request," and I said "Now Ward is presenting evidence as though I was crooked about it. I would like to have you be my witness." He said: "I understand the Government is going to call me and I will testify to it." And he has been in Chicago ever since and he has not testified.

Mr. Ward: Just a minute Mr. Glasser, I am not objecting to anything—

The Court: Did you subpoena him?

The Witness: No, I have not.

The Court: He is subject to subpoena in this case if you want him here, you can have him here.

The Witness: He is a Government witness.

Mr. Stewart: Can't we argue our case when the time comes?

Mr. Ward: Just a minute, I am making no objection and I want to be heard and the last statement I move be stricken, the last few lines of it, something about the agent.

The Court: What was it?

(Answer read by the reporter, as above recorded.)

Mr. Ward: Yes, "He has been in Chicago ever since and he has not testified." It is not responsive and I move to strike it.

The Court: That may be stricken. I will say now to the defendant he is subject to subpoena.

The Witness: I am sorry, Judge.

The Court: You have a right to bring him into this court if you wish.

Corroboration of Glasser's testimony that the case was stricken with leave to reinstate at Mr. Ritter's request, because of the weakness of the evidence, is furnished by the fact that the record discloses the case as never having been reinstated.

In view of the foregoing, we respectfully submit that there is nothing in this transaction furnishing the slightest indication of lack of conscientious service on Glasser's part, much less any suggestion of guilt of the charges in the indictment.

Still in Garage at 118th Place, Chicago.

The opinion says:

Prior to September 1, 1937 an illegal still was being operated in a garage on the 118th Place, Chicago. On September 1, 1937, investigators of the Alcohol Tax Unit raided the garage and arrested Peter Hodorowicz and Clem Dowiat. After the arrest Frank Hodorowicz called upon Kretske and inquired whether Kretske could take care of the case and was told that he (Kretske) "would have to look into it." Kretske told Hodorowicz to return in a few days. On September 23, 1937, Hodorowicz again called upon Kretske and was informed that for \$800 to be delivered to "Red", the case could be settled. Hodorowicz gave Kretske \$800. After the money was given to Kretske, Kretske informed Hodorowicz that "Everything is taken care of for tomorrow morning." The next morning Peter Hodorowicz and Clem Dowiat were discharged by the United States Commissioner.

This case was incapable of successful prosecution from the beginning because the search warrant was served upon the wrong address. This was admitted by Investigator Rossner (Tr. 277-279). The petition to suppress had been filed about a week before the hearing. This was done by Attorney Balaban, who had no connection with Kretske (Tr. 728). If Kretske had examined the Commissioner's file, a public record, or had been present at the hearing, Kretske would have known that the case would of necessity be dismissed by the Commissioner the following morning, at which time the Commissioner had stated he would announce his decision. There was nothing that Glasser could have done to prevent this result. Moreover, there was no reason why Kretske should have divided the alleged \$800 with Glasser, because Kretske knew that Glasser could not have prevented the dismissal of the case. Furthermore, Investigator Rossner testified that at the hearing before the Commissioner he gave all the evidence he had in support of the case and did not withhold anything. In fair-

ness to Kretske it should be stated that he denied the receipt of this \$800 and any and all conversation with Frank Hodorowicz or anyone else agreeing to fix cases.

This transaction shows no indication of lack of conscientious duty by Glasser, much less any evidence of criminal misconduct.

The Frank Hodorowicz Conversation With Glasser About the Case Against the Former, Clem Dowiat and Peter Hodorowicz.

The opinion says:

It further appears that on June 3, 1938, Clem Dowiat and Frank and Peter Hodorowicz were indicted, charged with unlawful possession of distilled spirits. Roth was retained to represent the defendants, and while the case was pending in the District Court Frank Hodorowicz and Kretske had a conversation in which Kretske stated that nothing could be done for Hodorowicz because "There is too much heat." Thereafter Frank Hodorowicz called at Glasser's office and complained that he was getting a raw deal, to which complaint Glasser replied: "Bailey says he will get my job if I don't put you away," and "all the money in the world," * * * "can't do you no good this time."

In view of the record, the extracts from the conversation above quoted should not be considered as admissions by Glasser as the court seems to consider them. Part at least of the statements were made in the hearing of Bailey and several others in a loud tone of voice (Tr. 710), and certainly Glasser would not have made any statements in that situation which partook of an incriminating nature. This conversation also was in the public corridor of the courthouse. Hodorowicz and Glasser also had a conversation in the presence of Investigator Burns, in which Glasser told Hodorowicz that the latter, *this time*, was going to the penitentiary for a long time (Tr. 928). This was not denied by Mr. Burns and, therefore, must be taken as con-

clusive. The remark about money was caused by Hodorowicz' statement that he would spend \$10,000 to get out of this trouble, to which Glasser replied, in substance, that if he spent \$10,000,000 it would not do any good. Hodorowicz did not deny the truth of this testimony of Glasser's, so that of three possible witnesses, all under the control of the Government, no one disputed the truth of Glasser's testimony.

It therefore, clearly appears, we submit, that the conversations in question were not admissions or intimations by Glasser of any wrong-doing but, on the contrary, were statements by him to a defendant, Hodorowicz, to show that defendant the futility of attempting a useless defense and the folly of suggesting a readiness to pay large sums of money to escape the consequences of his (Hodorowicz') misdeeds.

Moreover, Hodorowicz' statement that he complained about a "raw deal" cast no suspicion upon Glasser, as Hodorowicz undoubtedly meant this as another version of his complaint at the Glasser trial that he (Hodorowicz) was innocent of the liquor charge and that the agents had lied about him (Tr. 340). Hodorowicz also complained to Investigator Bailey about the equivalent of a raw deal. On the occasions when Bailey told Hodorowicz before his case came up that "He (Bailey) got him," Hodorowicz said: "It was dishonest"—"I told him he ain't fair and all like that," "And he just smiled and says: 'That's the way we present the case,' or something like that" (Tr. 338).

It, therefore, appears, we respectfully submit, that these conversations with Hodorowicz were part of the performance of the routine duty of Glasser in dealing with defendants and in endeavoring to save the Government time, trouble, and expense by endeavoring to induce a guilty defendant to plead guilty without trial. This conduct was fair to both Hodorowicz and the Government, as Glasser

convicted Hodorowicz after trial in that case, being the first time after many years of bootlegging operation that Hodorowicz had been convicted.

There is nothing in this incident, we respectfully submit, indicating any lack of conscientious performance of duty by Glasser, much less any criminal misconduct.

The Western Avenue Still Case.

The opinion says:

On September 19, 1936, while one Victor Raubunas was conducting a tavern in Chicago, the defendant Kaplan came to the tavern and suggested that Raubunas engage in the illegal manufacture of alcohol, assuring Raubunas that the business would be protected "through the Federal Building," but that it would cost \$1000 to secure the protection. Raubunas gave Kaplan \$1000 and thereafter Raubunas, Kaplan, Adam Widses and one Ralph Bogush operated a still at 2524 South Western Avenue. On July 2, 1936, investigators of the Alcohol Tax Unit raided the premises and seized the equipment.

During 1936 Kaplan and Raubunas had other transactions involving the illegal manufacture of untaxpaid spirits and Raubunas made several visits to a garage operated by Kaplan at Kedzie and Ogden Avenues. On one of these visits he saw Kaplan enter an automobile with Kretske and Glasser and drive away with them.

The opinion seems to misapprehend the testimony of Raubunas. He did not testify that he paid \$1000 for protection, but that he paid \$1000 to become a partner in the still, which Kaplan told him was to be protected through the Federal Building.

The alleged meeting of Kaplan with Kretske and Glasser in an automobile mentioned by Raubunas is something which, we respectfully submit, should have no weight with the court. It is a matter incapable, in its nature, of successful contradiction by the defendants and subject to the well-known rule of evidence that testimony in its nature

incapable of contradiction is of little or no weight. The various discrepancies in Raubunas' testimony on this point, making it entirely incredible, have been set forth on pages 72-73 of our original brief.

The opinion mentions that a no bill was returned in this case. The reason for this is furnished by the last paragraph of Exhibit 81, which is the investigator's report. This report states that the witnesses were reluctant and unwilling to testify and had given contradictory statements. The report suggests that Glasser should call them to his office for the purpose of trying to get proper testimony from them. Evidence of the Government (Tr. 528) proved that Glasser took before the Grand Jury the witnesses furnished by the investigator, who were reluctant, and that as a result thereof a no bill was voted. The conduct of the Western Avenue Still Case does not furnish any indication of any wrongful act or omission on the part of Glasser.

Spring Grove Still Case.

The opinion says:

In October or November of 1936, Raubunas, Kaplan, Edward R. Dewes, and several other men operated a still, manufacturing alcohol, at Spring Grove, Illinois, until January, 1937, when it too was raided by Government officers.

In July, 1937, the Alcohol Tax Unit brought to Glasser's attention the Western Avenue and Spring Grove still violations and requested prosecution. Written reports containing information implicating Kaplan and others were furnished. Glasser appeared before the Grand Jury. The Grand Jury returned a no bill against Kaplan, Raubunas, Widzes, and Bogush in the Western Avenue Still.

It further appeared that the Alcohol Tax Unit commenced its investigation of the Spring Grove still on February 10, 1937, a final report being submitted to the District Attorney in July, 1937. Between February and July of 1937, several of the investigators held conferences with Glasser regarding the names of possible

witnesses and their testimony. Glasser informed one of the investigators that he had heard that Kaplan was a notorious bootlegger and that there was sufficient evidence to obtain his indictment and conviction.

On May 15, 1938, after the defendant Horton had informed Edward R. Dewes that Kretske desired to see Dewes, Horton and Dewes called at Kretske's office. There Kretske advised Dewes that the grand jury was in session, and that if Dewes could raise \$100, he (Dewes) would not be indicted for the Spring Grove still. On May 17, 1938, at Kretske's office in the presence of Horton, Dewes gave Kretske \$100. The money, Kretske said, would be sent over to the red-head.

It further appears that Glasser presented the evidence relative to the Spring Grove Still to the grand jury on May 17, 1938, and told the jurors who should be named in the true bill. Notwithstanding there was evidence implicating Kaplan, Dewes, and Raubunas, a no bill was returned against them.

The evidence of the Government showed by Exhibit 96, which was a transcript of part of the evidence which Glasser produced before the Grand Jury, that Glasser presented there all the witnesses available to him and gave to the Grand Jury the names of all prospective defendants, including Kaplan, Raubunas, and Dewes (Tr. 529). These names were given in the order of their importance, with Kaplan first on the list. It clearly appears that all the witnesses and information described in the Investigator's reports were not available to Glasser, but that he presented all the witnesses available and the full evidence at hand, but that this evidence was not sufficient to induce the Grand Jury to indict the three parties last mentioned. There seems to be an assumption in the opinion that Glasser did not tell the Grand Jury to indict Kaplan, Raubunas, and Dewes. However, Ellis testified that Glasser told the Grand Jury whom to indict and White states the same thing and White at Glasser's direction gave them the names with that of Kaplan heading the list. It is clear, therefore, that the Grand Jury did not follow Glasser's

recommendations as to the defendants who should be indicted. This is further demonstrated by the testimony by the foreman of the Grand Jury, Gates (Tr. 608) that they exercised their best judgment as to whom to indict and who should not be indicted, in accordance with Judge Wilkerson's instructions to act only upon such evidence as would be sufficient in a court of law.

The Kwiatowski Case.

The opinion says:

On August 25, 1938, one Walter Kwiatkowski was arrested while driving an automobile containing untaxpaid alcohol, taken to Glasser's office and charged with unlawful possession of distilled spirits. He was released from custody upon a bail bond furnished by defendant Horton. Prior to the hearing before the United States Commissioner, Horton informed Kwiatkowski that "he could fix the case for \$600." Kwiatkowski withdrew \$3750 from his savings account in a Chicago Bank and gave Horton \$600. The Commissioner dismisses the complaint. Glasser appeared for the Government.

The statement that the car in which Kwiatkowski was arrested contained untaxpaid alcohol seems incorrect (Tr. 397).

Kwiatkowski also denied on the witness stand that he gave Horton \$600 to fix the case (Tr. 415).

However, with these matters Glasser had no connection and his conduct of the case appears to have been proper in all respects. Investigator Rossner testified (Tr. 398) that he made a full disclosure of the facts at the hearing before the Commissioner, after which Kwiatkowski was discharged by the Commissioner. The evidence indicates that Glasser was never requested by the Alcohol Tax Unit to reopen the Kwiatkowski case. There was no proof that the letter and report of November 10, 1938, (Tr. 585-586) was ever delivered to Glasser. Glasser denied that he ever received this supplemental report (Tr. 963).

Therefore, we respectfully submit that there is no indication of lack of conscientious performance of duty in this transaction, much less criminal misconduct.

The Abosketes Matter.

The opinion says:

In February, 1939, Investigator Thomas Bailey informed Glasser that one Frank Brown, recently convicted of a liquor violation and confined in the Cook County Jail, desired to impart information relative to others implicated in the violation. Brown was brought to Glasser's office and there stated that one Nick Abosketes was connected with the illegal operation of the still upon the Murdock Farm, in Illinois. Shortly thereafter one William M. Brantman from Chicago, called Nick Abosketes over the telephone at Milwaukee, Wisconsin. The following day Abosketes came to Brantman's office in Chicago. Brantman told Abosketes that he had connections with the Federal Building and could stop things, and that Brown had given certain information to the Federal people connecting him with the Murdock Farm still. On April 19, 1938 Abosketes paid Brantman \$3000 in cash, obtaining therefor a receipt in which Brantman stated the money was being paid on account of services. Brantman never rendered any service to Abosketes. Several weeks later Brantman called upon Abosketes at Milwaukee and informed Abosketes that everything was stopped and under control. The record discloses that the \$3000 was delivered to Kretske.

The Opinion seems to assume that Brown was willing to be a witness against Abosketes. Such is not the fact. Brown was one of twelve men convicted by Glasser for operation of an illicit still, on the Murdock Farm in McHenry County, Illinois. He was under sentence of five years to the penitentiary. Brown refused to testify against Abosketes, unless given a promise of consideration on behalf of himself and the other convicts (Tr. 939). Bailey's testimony is consistent with that of Glasser on this point (Tr. 648). Glasser and investigator Herrick went to Wash-

ington for the purpose of obtaining official authority to make such a promise to Brown. They were unsuccessful in obtaining the authority in question.

At the time Brantman first told Abosketes that Brown had given information to the Federal people implicating Abosketes that statement was not true so far as Glasser was concerned and Glasser was in fact preparing to go to Washington, which he did shortly before February 25th, with Herrick, to get authority to promise Brown and his associates clemency *if* they could furnish testimony that would lead to the conviction of Abosketes. Because of inability to obtain the authority mentioned and inability to secure testimony of Brown or his associates against Abosketes, Glasser was unable to proceed further with the proposed prosecution of Abosketes. In fact apparently Glasser was advised by Herrick and Burns that the authorities in Wisconsin had sufficient evidence to convict Abosketes and that the prisoners, Brown and associates, should be permitted to go to serve their sentences. This was sometime prior to March 24th, on which date the prisoners were sent to the penitentiary.

Bailey also evidently felt the prosecution of Abosketes in Illinois was impracticable, as he testified he never discussed the Abosketes case with Mr. Glasser after March 10th (Tr. 649).

It is clear that Brantman did not obtain any information about the Abosketes matter either directly or indirectly from Glasser. The prisoners were sent to the penitentiary in March and Brantman did not obtain the \$3,000 from Abosketes until April 19th. Brantman could have known from the very fact that the men had been taken to the penitentiary that any efforts to obtain their testimony against Abosketes had been unsuccessful. If Glasser had been trying to frighten Abosketes into giving the \$3,000 to Brantman, he would have caused the prisoners to be kept in Chicago

in order to give the impression that they were furnishing testimony against Abosketes.

There is not the slightest evidence we submit of any protection of Abosketes by Glasser nor is there any indication of lack of conscientious performance of duty or much less criminal misconduct in this transaction.

Summary of the Evidence in the Opinion.

The summary of the evidence of the Government in the opinion when completed by the inclusion of the additional facts above set forth by us, we submit, does not weigh against Glasser's innocence. The summary in the opinion may be briefly analyzed, as follows, viz.:

“(1) The relations existing between Glasser and Kretske while employed as assistant United States District Attorneys and after Kretske's separation from the service.”

There is nothing in these relations indicating misconduct on Glasser's part.

“(2) The relations between Kretske and Roth and Roth's employment in liquor violations upon Kretske's recommendation.”

Manifestly this matter has no application to Glasser.

“(3) The relations between Glasser, Kretske, Horton and Kaplan.”

The evidence shows no relation between Glasser and Horton. As to Kaplan, the testimony of Raubunus that he saw Glasser in an automobile with Kretske and Kaplan is so insubstantial and incredible that we submit it is without force.

“(4) The knowledge that Horton had concerning the proposed indictment of Swanson and Del Rocco; the payment of \$500 to Horton; and the failure to indict Swanson and Del Rocco.”

As we have shown, we believe, there was no intention by the authorities to indict Swanson and Del Rocco at the

time of this alleged statement by Horton. Those parties had not been arrested and no report had been made by the Alcohol Tax Unit to Glasser as to their alleged connection with the still or requesting their indicting.

"(5) The meeting of Kretske at Hodorowicz's store; the recommendation of Roth as attorney to defend; the payment of currency to Kretske; the statement of Kretske 'not to worry, everything will be taken care of'; Glasser to receive part of the money; and the striking of the indictment."

Glasser had nothing to do with the alleged actions of Kretske and Roth. Glasser's action in striking the indictment was on the recommendation of Investigator in Charge Ritter. This was not disputed by the Government or Ritter.

"(6) The payment of \$800 by Frank Hodorowicz to Kretske to be delivered to Red; Kretske's statement 'Everything is taken care of for tomorrow morning'; and the discharge of the violators the next morning."

As shown by the undisputed evidence this case was dismissed by the Commissioner because of the wrongful search of premises under a search warrant. Glasser did not prepare the search warrant, and, of course, had nothing to do with the serving of it. Necessarily, therefore, he was not responsible for the dismissal of the case. Moreover the hearing had been completed, the case taken under advisement by the Commission, and everything that Glasser had to do in the course of his official duty had been completed before the time of the alleged payment of the \$800.

"(7) The indictment of Dowiat, Frank and Peter Hodorowicz; the retaining of Roth to defend; and his discharge after Hodorowicz was told by Glasser that 'all the money in the world could do him no good this time.'"

The statement by Glasser to Frank Hodorowicz was for the purpose of showing him the futility of attempting a defense. The emphasis by the Government upon the words "this time" seems without foundation. Glasser in making

this statement probably had in mind the fact that Frank Hodorowicz had escaped prosecution in the case in which he had been indicted in Indiana, in 1929, and had also escaped prosecution in connection with the case described by Judge Barnes where the prosecution of Frank Hodorowicz and his associates was spoiled by an investigator, whom the officials of the Alcohol Tax Unit said was "wrong".

"(8) The relations between Raubunas and Kaplan and between Kaplan, Kretske and Glasser."

This seems to be a repetition of paragraph 3 so far as Glasser is concerned.

"(9) Glasser's conduct and actions relative to Raubunas, Kaplan and Dewes concerning the Western Avenue and Spring Grove stills."

The evidence shows that Glasser presented all the witnesses and evidence available to the Grand Jury and handled these matters properly.

"(10) Glasser's actions and conduct concerning Brown and Abosketes; and the payment of \$3,000 by Abosketes to Brantman and by Brantman to Kretske."

Glasser endeavored to obtain the testimony of Brown and associates against Abosketes but was unsuccessful in this effort and therefore could not prosecute Abosketes. Glasser's conclusion after these efforts that the prosecution of Abosketes was impracticable evidently was concurred in by Investigators Bailey, Herrick and Burns. No connection of Glasser is even suggested by the evidence between the alleged payment of \$3,000 by Brantman to Kretske.

"(11) The conduct and statements of Roth in the Wroblewski case."

Manifestly Glasser had no connection with the conversation between Roth and Alexander Campbell in Indiana. The first conversation, if true, would have to be considered an independent attempt by Roth to influence Alexander Campbell. With this Glasser had nothing to do. The

second conversation, if true, would be an admission by Roth against himself. Glasser had no connection therewith and in addition at the time it is said to have occurred Glasser had left the Government service and all power on his part to carry on the alleged conspiracy charged in the indictment had ceased.

The summary of the Government evidence and the opinion of the Court herein is rather similar to the summary of the Court of Appeals in the case of the *United States v. Manton*, 107 F. (2d) 834. However, the substance of the evidence in the two cases is fundamentally different. In the Manton case there was evidence of numerous receipts of large sums of bribe money by Manton and many other irregular actions on his part. No such evidence is in the case at bar. The evidence in the Manton case is summarized at Page 844 of that Opinion:

“(a) The long and friendly relations between Fallon and Manton. (b) The employment of Fallon in obtaining loans for the Manton corporations. (c) The apparanetly gratuitous introduction by Fallon to Manton of persons interested in cases while they were under consideration or pending. (d) Lotsch’s testimony that after being introduced by Fallon he paid to Manton \$10,000 ostensibly for the corruption of Judge Thomas, received from Manton a trial brief of the government in that case, consulted with him about the language of an opinion before it was handed down, was advised to leave New York because of an investigation then in progress or threatened, was admonished to keep secret the Thomas matter, and that Manton, after being told, upon inquiry by him, the date when a particular transaction had occurred, said it was barred by the statute of limitations. (e) Manton’s relations with Reilly, their telephone conversations, in which Manton expressed anxiety about Fallon’s being carried on the payroll because of a pending investigation, Manton’s suggestion that the circumstance would be embarrassing to him and that the record pages relating to the matter should be pulled out, that certain records be destroyed because of the Art Metal investigation, and that the statute of limitations would

protect them in that investigation. (f) The manipulation of the schedule of assignments of judge to enable Manton to sit in the Schick case. (g) The loans made at Manton's request by or through the intervention of persons interested in some of the cases during their pendency, one of the most significant of these being the loan of \$25,000 made in the name of Sullivan by Lotsch to Manton at the latter's solicitation on the very day of the argument in the General Motors case, the proceeds of which were immediately handed by Sullivan to Manton, a method adopted to conceal Manton's connection with the transaction. Similar technique appears in respect of the loans made by Andrews to or for corporations in which Manton was interested through Spector as a conduit, the details in respect of which will more fully appear when we come to consider the case of Spector."

Testimony of District Judges on Behalf of Glasser.

We respectfully ask leave to call attention to what seems to be an advertency in description of the testimony of the three district judges who appeared as witnesses for Glasser. The Opinion states that they testified "that so far as they could observe he rendered the Government conscientious service."

We respectfully call attention to the testimony of Judge Igoe that Glasser acted under his close supervision, making daily reports to him and that all of Glasser's important actions had his approval. Also to the testimony of Judge Barnes that the Hodorowicz cases were not prosecuted earlier against the principals by Glasser because the Alcohol Tax investigator working on the case was "wrong" and did not perform his work properly. Judge Barnes testified that this explanation was volunteered to him in chambers by the representatives of the Alcohol Tax Unit when Glasser brought to his attention a statement by counsel representing one of the Hodorowicz group that a case had been fixed. Judge Barnes also said that Glasser was

an excellent prosecutor, possibly too good for the criminals (Tr. 720).

Claims of Error Discussed by the Court.

A careful study of the Court's opinion leads us to the conclusion that the court felt that some of the claims of error were well founded but that the Appellate Court did not consider them reversible error because of the supposed strength of the evidence against Glasser. This feeling we believe we have shown to be based upon a misunderstanding of the record. We, therefore, respectfully, submit that the court should alter its decision with respect to the reversible nature of some of the errors complained of. This is in accordance with the teaching of *Berger v. U. S.*, 295 U. S. 78, to the effect that errors which might be immaterial where the evidence of guilt was strong, would be considered prejudicial and cause for reversal in cases where the evidence was weak or evenly balanced. In that case the court said:

"Under these circumstances prejudice to the cause of the accused is so highly probable that we are not justified in assuming its non-existence. If the case against Berger had been strong or, as some courts have said, the evidence of his guilt overwhelming, a different conclusion might be reached."

Gold v. U. S., 26 Federal (2) 185.

Fliashnick v. U. S., 223 Federal 736.

In the present case, the opinion of the court states that the following were not such errors as to warrant reversal:

The appointing of Stewart to represent Kretske, inasmuch as there was a great amount of testimony clearly imputting the receipt of bribe money by Kretske and none by Glasser, and inasmuch as most of the incriminating reference to Glasser consisted of alleged statements by Kretske that he was going to pay some or all of the bribe

money to Glasser, we submit that it is manifest that the interests of Glasser and Kretske were conflicting and that Glasser could not properly be represented by the same attorney as was Kretske. We again urge this as an error decidedly prejudicial to Glasser.

Another matter decidedly injurious to Glasser and which the court states did not constitute sufficient cause for reversal, was the admission of testimony to the effect that Investigator Bailey had a good war record and had not been ordered out of a courtroom in West Virginia. This was claimed to be rebuttal of cross-examination of Glasser to the effect that he told Roth he had heard a rumor that Bailey had been ordered out of a courtroom in the South. The cross-examination itself was improper. The so-called "rebuttal evidence" was still more improper. This for several reasons:

It was a collateral matter; the so-called evidence did not controvert that Glasser had heard such a rumor, but denied the truth of the rumor; and the additional evidence that Bailey had a good war record was incompetent under any legal viewpoint.

Manifestly, the only purpose and effect of this testimony was to build up the credibility of Bailey as a witness for the Government and to injure the credibility of Glasser as a witness defendant before the jury. Bailey was one of the chief witnesses against Glasser and the effect of this incompetent testimony doubtless was extremely prejudicial to Glasser's interests.

Another injurious incident consisted in the limitation of the cross-examination of Mr. William J. Campbell when he testified in impeachment of a part of Glasser's testimony. The opinion of this court states that large discretion is committed to the trial judge in controlling the cross-examination and great latitude is permissible. This rule, however, does not operate until a fair and proper

cross-examination has been had. In the present case the limitation was placed upon the cross-examination before any cross-examination whatever had been made and it was ruled that the cross-examination would be restricted to what the witness had testified on direct examination. This ruling apparently was understood by counsel as preventing all inquiry other than as to the exact words used in the conversations in dispute. Mr. Stewart stated he would like to go into other matters to show which version was most likely true, to which the trial court replied:

"No, you are limited to it."

This again we submit was a prejudicial error as it, in all probability, constituted an effective blow to Glasser's credibility in the eyes of the jury.

Another instance which the opinion states did not constitute reversible error was the admission of the testimony of Alexander Campbell as to alleged conversations with Roth in Indiana regarding the Indiana prosecutions against the Wroblewskis. The opinion of the court here seems to consider this testimony admissible against Roth, but apparently overlooks the fact that it was not limited by the court in its application to Roth, but went in against Glasser as well, over the objection of the latter. Inasmuch as these conversations, if they actually occurred, were indicative of direct attempt at corruption, it seems plain to us that they were highly prejudicial as evidence against Glasser.

Errors Prejudicing Glasser's Defense.

Several errors which we deem extremely prejudicial to Glasser's defense have not been mentioned in the opinion of the court. One of these was the incident in which Frank Hodorowicz, government witness, was allowed to testify at length to the effect that he paid \$800 to an unidentified person, named Frank Miller, because Frank

Miller said he could take care of the Peter Hodorowicz and Walter Hort case for that much money Frank Miller, of course, was not produced as a witness at the trial. There was not the slightest connection shown between Frank Miller and any of the defendants on trial. There was not even testimony that Frank Miller ever talked to any of the defendants on trial. Hodorowicz said that Frank Miller was a bootlegger—he was not a lawyer (Tr. 308). Hodorowicz also testified, on direct examination by the government attorneys and the court, that he gave \$500 to Frank Miller in another case involving Walter Hort (Tr. 308-309). Hodorowicz testified that this Frank Miller told him that they would drag the first case along. Hodorowicz testified to his conclusion that he, Frank Miller, did drag it along, and that in the second case he, Frank Miller, got “them” (meaning apparently Walter Hort) discharged “in front of the Commissioner”. Frank Hodorowicz testified that Frank Miller did not mention any of the defendants in the Glasser conspiracy case at the time he was making arrangements with Hodorowicz to “take care of” the two cases for which the money was said to have been paid to Miller (Tr. 308). Unfortunately, there was no objection to this testimony by any of the counsel for any of the defendants. However, its incompetency is so apparent and the prejudice so evident that we respectfully submit this court could very properly consider it as matter that should have recognition on the appeal.

Another matter which we contend was erroneous and which evidently caused great prejudice to Glasser's defense was the refusal of the prosecuting attorneys to show exhibits to Glasser while he was under cross-examination and being questioned about the contents of such exhibits (Tr. 979-982). Inasmuch as the exhibits were very numerous and many of them voluminous, Glasser was at a great disadvantage in being cross-examined as to their contents

without being allowed to see them. The prosecuting attorneys finally stated, in the presence of the jury, that Glasser kept saying that he did not know, in answer to these questions, and that they would allow him to examine the files during the week-end intermission of court. When Glasser applied Saturday morning at the United States Attorney's Office, he was denied opportunity to examine these exhibits, the excuse given being that he was not accompanied by his lawyer. Monday morning the cross-examination was resumed, with a change of the prosecutors, and extensive cross-examination in which again Glasser was at a great disadvantage because of the inability to make preparation by examination of the exhibits. We respectfully submit that this matter was extremely prejudicial to Glasser.

Another matter which seems to us of considerable importance was the lengthy cross-examination of Glasser as to the so-called personnel record (Tr. 989). This personnel record consisted of several typewritten pages, one of which bore Glasser's signature. It had no connection whatever with the issues at trial. It consisted of mimeographed questions and typewritten answers as to Glasser's attendance at high school, law school, etc., and had been prepared only a few months before the trial, evidently at the request of the United States Attorney. Some of the typewritten answers on these sheets were incorrect, particularly the statement that Glasser had the degree of L.L.D. A lengthy and severe cross-examination was made of Glasser as to the contents of this so-called personnel record, notwithstanding his statement that some of the answers were incorrect due to clerical errors or misunderstandings, and that the correct information as to the matters therein set forth was in the possession of the United States Attorney's Office, having been given in a prior or original personnel record. Mr. Ward promised to produce the original

record later, but never did so. The non-production of the original record indicates, we respectfully submit, the truthfulness of Glasser's statement that the errors in the second personnel record were clerical and inadvertent. Moreover, as a matter of law, cross-examination upon this subject was improper, as being a collateral subject or act of alleged misconduct not connected with the issues of the case on trial. The rule of law is intended to prevent surprise upon the defendant by dragging into the case and his cross-examination matters against which he can not be prepared to defend. The justice of the rule is clearly exemplified in the present instance where Glasser was taken entirely by surprise by the introduction of this matter into his cross-examination, was subjected to questions which necessarily would arouse suspicion of his integrity and credibility in the minds of the jury in a matter which was left without the opportunity of defense as it arose in the closing moments of the trial, and the prosecuting attorney stated that he would get to or produce the original record, which Glasser contended was correct, and which indicated that the errors in the second record were innocent, but which original, or first record, was never produced by the prosecuting attorney. Manifestly, we submit the prejudice in this matter was very great. Unfortunately, there was no objection to this cross-examination by counsel for appellant, but we respectfully submit that it was a matter of such importance and so prejudicial to appellant that this court may very properly take cognizance of it.

We respectfully submit that the opinion of the court misapprehends the evidence in connection with Nick Girardi, which led to the introduction in evidence of the photograph of Girardi, with the words "auto-thief" and "counterfeiter" on the back thereof. Mrs. Jurkas did not say that Nick Girardi was the owner of the still in the basement of Jurkas home. Instead, she said that the owner of the still

lived in Gary, Indiana, and that is all she knew about him (Tr. 611), and that his name was Jack Clementi (Tr. 614). Mrs. Jurkas testified on direct examination that she did not tell Glasser about Nick Girardi.

“Q. Just a minute—while you were with Mr. Glasser did you tell him that you had been to see Nick Girardi?

A. No, I never mentioned Nick's name to him.”

Apparently, the opinion of the Appellate Court drew the same erroneous assumption from the testimony of Mrs. Jurkas that the trial court did, namely that Nick Girardi was the owner of the Jurkas still. Undoubtedly, therefore, the jury drew the same erroneous assumption. Therefore undoubtedly the jury attached great importance to this photograph of Nick Girardi, the supposed owner of the still, together with the words “auto-thief” and “counterfeiter” on the back thereof. The opinion of the court here states that Glasser took no action concerning the alleged illegal operation of this still, which, of course, is an intimation that Nick Girardi was the owner of the still and should have been indicted for that supposed offence by Glasser. However, it is clear that Glasser could take no proper action in the way of prosecution, for the reason that the record shows that Nick Girardi was not the owner of the still and that the owner was Jack Clementi, whose whereabouts were unknown, except that Mrs. Jurkas thought he lived in Gary, Indiana. Evidently Jack Clementi's whereabouts never were ascertained, as there was no proof made in the record that he was ever seen or known to anybody other than Mrs. Jurkas.

Tony Jurkas, the husband of Mrs. Jurkas, also testified that John Clementi paid him in connection with the still. Jurkas, an inconsequential underling, was indicted, by Glasser's successors, for the still, pleaded guilty, and was placed on probation. He was not represented by counsel.

Unfortunately, no objection was made to the introduction of the photograph of Nick Girardi, or the confused testimony of Mrs. Jurkas, which led to the misapprehension of the effect of her testimony. However, we respectfully submit that the matter is of such importance that this court may very properly take cognizance of it.

Improper Selection of Trial Jurors.

The opinion of the Appellate Court states that the trial court considered the affidavits filed by appellants and was convinced that no prejudice resulted to appellants from the incidents complained of in their affidavits in support of motion for a new trial. Glasser's affidavit stated that because of the facts described in said affidavit he did not have a trial by a jury free from bias, prejudice and prior instructions, and that thereby his rights were prejudiced in that he was deprived of trial by jury as guaranteed to him by the laws and Constitution of the United States. These allegations were not controverted by the Government and therefore must have been accepted as true by the trial court. Therefore, we respectfully submit, it was beyond the province of the trial court to find that no prejudice resulted to Glasser because such finding was in direct violation of the only evidence and information upon which the court could act, namely the allegations in Glasser's affidavit. In short, the ruling of the court upon this point was in the nature of a summary judgment. We submit that the allegations of the affidavit clearly show prejudice to Glasser by this method of selection of the female jurors. The only method by which the trial court by any possibility might ultimately have been justified in a finding of non-prejudice would be if he had required the Government to deny the allegations of prejudice in Glasser's affidavit and then have caused evidence to be heard pro and con, upon the issue of the existence of preju-

dice. This was the course recommended in *Ogden v. United States* 112 Fed. 523, 3d Cir. In short, we respectfully submit that the trial court had no right to decide that prejudice was not existent when his decision was based entirely upon the sufficient allegations of an affidavit showing such prejudice, and which affidavit further made an offer to prove all the matters relied on therein.

Conclusion.

In conclusion we respectfully submit that by reason of the foregoing matters the petition for rehearing should be granted.

Respectfully submitted,

JOHN ELLIOTT BYRNE,

Attorney for Petitioner.

DANIEL D. GLASSER,

Petitioner, Pro se.

And on the same day, to-wit: On the twenty-fourth day of December, 1940, in cause No. 7316, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is in the words and figures following, to-wit:

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT

No. 7316

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

NORTON I. KRETSKE,
Defendant-Appellant.

Appeal from the
District Court of
the United States
for the Northern
District of Illi-
nois, Eastern Di-
vision.

Honorable
Patrick T. Stone,
Judge Presiding.

PETITION FOR REHEARING

JOSEPH R. ROACH,
10 S. La Salle St.,
Chicago, Illinois,
Attorney for Appellant.

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT

No. 7316

THE UNITED STATES OF AMERICA,
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NORTON I. KRETSKE,
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for the Northern
District of Illi-
nois, Eastern Di-
vision.

—
Honorable
Patrick T. Stone,
Judge Presiding.

PETITION FOR REHEARING

*To the Honorable Judges of the
Circuit Court of Appeals for the Seventh Circuit:*

MAY IT PLEASE THE COURT:

Appellant desires respectfully to point out to this Honorable Court certain erroneous assumptions apparently indulged in by this court in arriving at its opinion heretofore rendered in this case. For the purpose of brevity this appellant re-asserts all the points which he raised in his original brief, as well as his reply brief,

and begs leave of this court to adopt the arguments of appellants Glasser and Roth in their respective petitions for rehearing, insofar as the same may apply to the points heretofore raised by him.

THE DEMURRER.

The court in its opinion holds that the indictment is not duplicitous for the reason that it charges "merely a conspiracy to defraud the United States Government".

The conspiracy statute may be violated either by a conspiracy to defraud the United States or a conspiracy to violate a statute of the United States. If this indictment merely charges a conspiracy to defraud the United States then the contention of appellant that the indictment is duplicitous should properly be overruled. However, this appellant contends that such is not the case, and desires to call to the court's attention the language in paragraph 14 of the indictment (Tr. 28) which follows very closely the language of Section 91 of Title 18, U. S. C. A., viz.: "that is to say, by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function, under and by authority of a department and office of the Government of the United States, with intent to influence his decision and action on certain questions, matters, causes, and proceedings which were at times pending, and which were by law brought before such officer or officers in his or their official capacity, and with the intent to influence such officer or officers to commit and aid in committing, and to collude in committing certain frauds on the United States, and to induce such officer or officers to do and to omit from doing certain acts in violation of

his or their lawful duty." The foregoing language, appellant respectfully submits, makes the alleged conspiracy one to violate a statute of the United States, namely Section 91 of Title 18, U. S. C. A.

In *Brown v. United States*, 145 Fed. 1 (C. C. A. 2), it was held where the first part of a count in an indictment set forth that certain persons "unlawfully did conspire" to defraud the United States, the conspiracy "to be effected in the manner following; that is to say"—and the violating part stated the details of the alleged conspiracy, the latter part was not to be construed as a *videlicet* separate from the charge of the information but that the whole sentence may be considered as a charging part.

In the case at bar the indictment charges a conspiracy to defraud the United States, *that is to say* by violating the provision of Section 91 of Title 18, U. S. C. A.

Following the reasoning in the *Brown* case, *supra*, it must be conceded that the language following the phrase, "that is to say", must be construed as part of the charging part of the indictment. Since this is true the indictment in this case charging, as it does, conspiracy to defraud the United States *and* a conspiracy to violate a statute of the United States, is, appellant respectfully submits, duplicitous.

Appellant, Kretske, desires to again call the court's attention to the cases which he cited under Point 2, Section A of his original brief, to the effect that a conspiracy to violate a statute such as Section 91, will not lie.

In its opinion this court makes reference to the case of *United States v. Manton*, 107 Fed. (2d) 834, where it was held that a conspiracy to defraud the United States of a lawful function of its judicial powers free from

corruption, improper influence, dishonesty and fraud is an indictable offense. A reading of the opinion in the *Manton* case does not disclose that the indictment charged that a conspiracy was to be carried out by "promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States." Herein lies the great difference between the indictment in the *Manton* case and the indictment in the case at bar. In the *Manton* case the court says, "It (the indictment) charges a conspiracy to obstruct justice and to defraud the United States, the scheme of resorting to bribery being averred only to be a way of consummating the conspiracy * * *." In the instant case the indictment charges that the offense was the promising, offering and causing and procuring to be promised and offered money and other things of value to an officer of the United States.

In view of the above, appellant contends that the violation of Section 91 as alleged in the charging part of the indictment at bar, was not an indictable conspiracy.

Appellant, for the reasons aforesaid, respectfully petitions this Honorable Court for a rehearing.

Respectfully submitted,

JOSEPH R. ROACH,

Attorney for Appellant.

And on the same day, to-wit: On the twenty-fourth day of December, 1940, in cause No. 7317, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is in the words and figures following, to-wit:

**IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

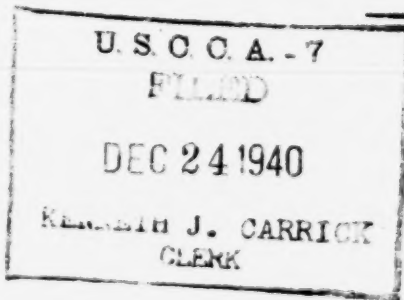
THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

ALFRED E. ROTH,
Defendant-Appellant.

Appeal from the District
Court of the United
States for the North-
ern District of Illinois,
Eastern Division.

Honorable
Patrick T. Stone,
Judge Presiding.

Petition for Rehearing.



ALFRED E. ROTH,
10 N. Clark Street,
Chicago, Illinois,
Pro Se.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

No. 7317

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ALFRED E. ROTH,
Defendant-Appellant.

Appeal from the District
Court of the United
States for the North-
ern District of Illinois.
Eastern Division.

Honorable
Patrick T. Seane,
Judge Presiding.

Petition for Rehearing.

To the Honorable Judges of the

Circuit Court of Appeals for the Seventh Circuit:

MAY IT PLEASE THE COURT:

The defendant Roth desires respectfully to point out to this Honorable Court important matters that appear to have been overlooked and erroneous conclusions of fact apparently indulged in by this Court in arriving at its opinion heretofore rendered in this cause. In the interest of brevity defendant will confine himself to some of the important matters in connection with some of the points. This defendant does not waive any point urged in his original and reply briefs and fully reasserts them with equal force.

THE MOTION TO QUASH. The defendant contends that the record fails to show that the indictment was returned into

open court by the grand jury. The opinion at page 3 says, "The record now before us shows * * *; that on September 29, 1939 at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, the grand jury returned four indictments in open court." The record shows that on September 29, 1939, an order was entered discharging the grand jury for the September term (Tr. 39). The record further shows that the portion of the order "The Grand Jury returned four indictments in open court" was "Added 10/30/39" (Tr. 39) thirty-one days after the discharge of the grand jury without any showing that there was any hearing or order by any court to correct any omission by the clerk in recording his orders, on September 29, 1939. This defendant believes that this Honorable Court overlooked this fact and the Court's attention is respectfully directed to it. The motion to quash should have been sustained for the reason that it appears the record does not affirmatively show the return of the indictment in open court by the grand jury before their discharge.

THE SUFFICIENCY OF THE EVIDENCE. This Honorable Court at page 6 of the opinion says, "We think it will suffice if we but enumerate the more important facts and appellant's connection or association with the suits and matters involved in the conspiracy." Here again in the interest of brevity this defendant will confine himself to these more important facts and with relation to him.

United States v. One Chrysler Sedan.

The opinion at page 7 says:

"One of the matters involved in the conspiracy related to a Chrysler Sedan. It was a libel action in which it was charged that the automobile, seized upon the premises of one Leo Vitale at Peru, Illinois, had been used in connection with a liquor tax violation. The cause came up for hearing before a district Judge

on December 23, 1938. Appellee was represented by Glasser, and Roth represented Rose Vitale, wife of Leo Vitale. Roth informed the trial court that the automobile belonged to Mrs. Vitale and had not been used in the manufacture of alcohol. Thereupon an investigator of the Alcohol Tax Unit, who had caused the seizure, informed Glasser that Roth was not informing the court of the true facts nor advising the court that Vitale had heretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for liquor tax violations, and requested that he be permitted to so advise the trial court. Glasser directed the investigator to leave the court room. The trial court ordered that the automobile be returned to Rose Vitale.

"Shortly after December 23, 1938, this investigator informed Glasser that he had a number of witnesses to whom Vitale had said that he (Vitale) had "Got out of this for \$900." and the investigator suggested that Glasser inquire of Vitale as to who received the \$900.00. Glasser said he would, but he never did."

The record shows that Rose Vitale, on September 22, 1938, filed a verified Statement of Claim with the Alcohol Tax Unit that she was the owner of the Chrysler Sedan. On October 24, 1938, she filed a sworn Answer and Claim in the libel action, alleging that she was the sole owner of the automobile, and denying in detail that the automobile was used for any unlawful purposes as charged in the libel (Exhibit 36).

Government witness, Agent Dowd, testified "Rose Vitale, the wife of this man, was the claimant of the ownership of the car, and before Judge Barnes there was presented a certified copy of the Secretary of State record, showing she was the owner and licensee of that car" (Tr. 222). Judge Barnes, before whom the libel action was tried, testified "I remember that case, the claimant was the wife of the bootlegger" • • • "The case was tried on that statement," (having reference to the agent's report) (Tr. 717).

The testimony of Judge Barnes (Tr. 718) is as follows:

“Q. And the point involved here, Judge, is this. Were you sufficiently informed concerning the facts involved in that case to make a decision on the law and the evidence?—

A. Well, it is the agents' statement. They never testified to more than their statement. They try their cases frequently on their statements, and that statement is not sufficient to forfeit a car. The car was not in the place where the still was, the car belonged to the wife, and I had no more right to take it than I had to take yours.

Q. And anything the agent might have said could not have changed that? A. Well, he stated in writing what he expected to prove, what he expected to swear to.

Q. And under these circumstances, you very often hear the cases without the actual testimony? A. Very, very frequently.

Q. And did Mr. Roth appear to represent his client, and Mr. Glasser appear to represent the government in a proper fashion? A. They not only appear to, they did.”

It seems that the result of this Honorable Court's analysis of the evidence as to Roth is that Roth represented Rose Vitale and that he informed the Court that the automobile belonged to Mrs. Vitale and had not been used in the manufacture of alcohol. This was known both to the Alcohol Tax Unit and the United States attorney long before the hearing by virtue of the verified statement of claim and answer and claim filed, as stated above.

It seems that this Honorable Court erroneously assumed and inferred that Roth was knowingly making an inaccurate statement to the court trying the libel. Was it not the duty of Roth as an advocate of his client's cause, based upon the sworn pleadings filed by his client, to make the statement that he did to the court? If he did not do so he would be neglecting his duty.

It seems that this Honorable Court assumed and inferred that Judge Barnes was not informed that Rose Vitale's husband was a bootlegger and had been convicted and sentenced, although the husband's criminal record was not material to the issue being then tried before the court. However, Judge Barnes was so informed because Judge Barnes testified, "I remember that case, the claimant was the wife of the bootlegger" (Tr. 717).

The alcohol tax unit agent made up and delivered the report to the United States Attorney and it was his report containing the facts in the case as prepared and presented by him that was before Judge Barnes.

The rumor picked up by Dowd that Vitale had said that he had got out of this for \$900, although no witness was produced on the trial of the case at bar to substantiate it, does not prove that such money was paid and that Roth was in any way a party to any such payment, nor that Roth had any knowledge of the rumor or what Dowd claims he told Glasser. It seems unreasonable that Vitale would pay \$900 to get out of this, namely, the recovery of an automobile appraised by the government at less than \$500 (See Exhibit 36) by paying \$900. If he had any reference to getting out of anything else, certainly that is entirely foreign to Roth's representation of Mrs. Vitale in the libel case. Roth did not know Leo Vitale, nor did he ever represent him in any case, civil or criminal. It might be stated for the information of this Court that the appellee in its brief mentioned a case in which Leo Vitale was involved criminally but in that case Mr. George J. Spatuzzuo represented Leo Vitale (Exhibit 165).

Roth did nothing more than any lawyer at the bar would do in advocating his client's cause and agreeing to have the case submitted on the agent's report, which is very frequently done as part of the established practice in the District Court, as testified to by Judge Barnes. To attach

1196

any inference of guilt based upon Roth's conduct in this case so as to exclude the hypothesis consistent with his innocence, one must enter a field far beyond that of speculation.

United States v. Elmer Swanson, Anthony Hodorowicz and Clem Dowiat (6949 Stony Island Ave. Still Case).

The opinion at page 8 says:

"It further appears that on December 31, 1937, Swanson and the Hodorowicz Brothers operated another still at 6949 Stony Island Avenue, Chicago, Illinois, which also was seized by the Government. Swanson was arrested and arranged for a bailbond through Horton. Roth was retained as an attorney to defend, having been recommended by Kretske, whom Swanson had met at Hodorowicz' hardware store.

"Frank Hodorowicz operated a hardware store at 11823 South Michigan Avenue and it was there, early in 1938, that Kretske, Horton, Hodorowicz and Swanson met. Horton introduced Kretske. There it was that Kretske said he would take care of the case; for \$1200 'it was supposed to be fixed up so nobody goes to jail.' \$500 in currency was paid to Kretske at his office, the balance to be paid later. At that conversation Kretske said, 'Don't worry about a thing. Everything will be taken care of.' Kretske also said that Glasser was to get part of the money and part was to take care of another lawyer.

"The case was placed on Judge Woodward's calendar, Glasser representing the Government and Roth the defendants. On April 28, 1938, on Glasser's motion, the indictment was stricken with leave to reinstate. Swanson paid no money to Roth for his services."

Government witness Anthony Hodorowicz denied any connection with the still. He testified, "I did not have any connection with a still at 6949 Stony Island Avenue (Tr. 343). Government witness Clem Dowiat also denied any connection with the still. He testified, "I was passing

near the premises and I was picked up" * * * "After I was arrested I heard a still was found in that place" (Tr. 242). Government witness Frank Hodorowicz testified "As far as I know my brother Tony (referring to Anthony) was an innocent man. Just walking on by where a still had been raided and Clem was an innocent man, just happened to be in the neighborhood. I don't know nothing about Swanson" (Tr. 316).

While Swanson on the trial of the case at bar admitted that he was interested in this still, he testified that he surrendered when he learned that there was a warrant for him in connection with the operation of a still and said, "I came here because I knew that I was able to go right out on bond and the reason I had made the arrangements in advance was that it would save me the inconvenience of being held in custody and questioned. I didn't want to be asked any questions about the operation of that still by the Federal agents and if they asked me I would have denied any connection with it. I thought they didn't have any proof that I had any connection with it, and I was pretty sure that they didn't, because I had been quite successful in keeping myself out of sight as far as the actual operation of the still was concerned" (Tr. 233-234).

The three defendants made statements in Roth's office denying any connection with the still, on May 2, 1938, while they were preparing for trial, which were taken down in shorthand by Frances Bornhorst and reduced to writing. (See Exhibits 182-183 and 184 and testimony of Frances Bornhorst) (Tr. 830).

Government witness Anthony Hodorowicz testified as follows (Tr. 344-455):

"The Witness: I was in Kretske's office with my brother Frank, Elmer Swanson and Clem Dowiat. When we were there a conversation was carried on with Mr. Kretske.

Q. What was said? A. We, we needed a lawyer.

Q. What was said by Mr. Kretske or you or anyone? Tell what conversation was had. A. Well, we needed a lawyer to defend us, he said,—

Q. Mr. Kretske was a lawyer, wasn't he?

The Court: Let him finish.

The Court: Q. Who said you wanted a lawyer to defend you. Did you tell Mr. Kretske that? A. We all wanted a lawyer.

Q. Did you tell Mr. Kretske that. Who was the spokesman for the crowd. A. My brother.

Q. What brother? A. Frank.

Q. What did he say to Mr. Kretske? A. He said: 'We need a lawyer to defend the boys.'

Q. What else was said? A. He said he could get a good lawyer.

Q. Mr. Kretske said in your presence, he could get you boys a good lawyer. A. Yes.

Q. What was then said? Did he tell you then who the lawyer was? A. No, he said he would send us to his office.

Q. And did he give you any address to Mr. Roth? A. Yes.

Q. You went to his office? A. Yes.

Q. When you got to his office, did you discuss with him this case? A. Yes."

At Tr. 347 Anthony Hodorowicz further testified as follows:

"Q. Now, Frank went up with you and acted as a spokesman when you talked with Mr. Kretske after you were arrested, is that right? A. Yes, sir.

Q. You were out on bond then? A. Yes, sir.

Q. And did you ask your brother Frank to fix that case for you? A. No.

Q. You did not want it fixed. A. I didn't know anything about that.

Q. You were an innocent man? A. Yes.

Q. All you wanted was a lawyer so you could be represented and bring out the facts? A. Yes.

Q. That was all you needed? A. Yes.

Q. You didn't need to fix anybody? A. No."

Government witness Elmer Swanson further testified as follows (Tr. 234):

"He (Roth) said we would go in front of the Commissioner first, and I could tell from the conversation with Mr. Roth that he was preparing for a hearing, before the Commissioner. Mr. Roth indicated it was possible the case was such that I might be discharged at the hearing, and he said he would do his best. Mr. Roth asked me questions along the lines you asked me, to try and find out what the Government might ask concerning me, because he was interested in trying to find out from me what they could prove against me, and I told him in a general talk, the same thing I have told you, that they didn't have anything as far as I knew. That is right. So when I went over there, I was prepared in case I was called as a witness in my own behalf before the Commissioner, to deny I had any connection with that still."

At Tr. 235 he further testified:

"As far as I could observe, it was a contest between the Government's lawyer and Mr. Roth as to whether we were going to trial that day, and Roth expressed some little displeasure that it was continued, and explained to us he would rather have the hearing, because he thought the Government didn't have anything to hold us and we could have won our case before the Commissioner, and he thought it was a kind of bad deal, they continued it, because while they were continuing it they might take it before the Grand Jury, and in that way we would be deprived of a chance before the Commissioner, and that is what happened. So when the case came up again before the Commissioner, the Gov-

ernment was again represented by Glasser, and it was dismissed because we had been indicted."

Government witness Commissioner Walker testified "that he (Roth) was vigorous and certainly very earnest in opposing a continuance" (Tr. 205).

The defendants were indicted and after having entered their pleas of not guilty in the district court on March 28, 1938, the case was set for trial on May 5, 1938. On May 2, 1938, the defendants were in Roth's office preparing for trial at which time their statements above referred to were taken and reduced to writing and a sketch, Exhibit 38, was prepared from the material furnished by the clients.

At Tr. 236 Swanson testified as follows:

"I understood from Mr. Roth when it was continued that a certain other day was set, and I expected to have to come back on that other day to come to trial, and on that day we came down here again and we went over to Roth's office and talked it over again to make sure we were all ready for our defense. Mr. Roth asked us to come over. We were willing to go ahead with this plan, we had to defend ourselves, and when we got to court, we found the court doing business but our names were not called, and we sat waiting for them to be called, so did Mr. Roth, and then it was a surprise to us when they finished the call, and our names were not called, and Mr. Roth then went down to look in the Clerk's office to see what happened. Then he said something about being stricken off with leave to reinstate, and he said the Government did that without letting him know, and of course we didn't know about it before Roth told it there, because if we had, we wouldn't have gone to all this trouble to get ready for trial."

On April 28, 1938, on motion of the Government the cause was stricken with leave to reinstate and is still in the same status (Exhibit 226). Glasser testified that the case was

stricken off with leave to reinstate at the request of Agent Ritter, the investigator in charge of the agents of the Alcohol Tax Unit. This stands uncontradicted and not denied. Roth received his compensation from Kretske in the sum of \$100.00 for representing the defendants (Tr. 868).

It seems that the result of this Honorable Court's analysis of the evidence as to Roth is that Roth was retained as an attorney to defend, having been recommended by Kretske, and that Swanson paid no money to Roth for his services.

It seems that this court erroneously assumed and inferred that Roth was not paid for his services in representing the defendants Swanson, Anthony Hodorowicz and Clem Dowiat. He was paid \$100.00 by the attorney forwarding the case. The fact that one lawyer referred his trial work to another lawyer who specialized in the particular field, and the fact that the forwarding lawyer made payment directly to the engaged lawyer for his services from the fee obtained from his clients, certainly does not warrant the assumption of an inference of guilt to the exclusion of the hypotheses consistent with his innocence. If the facts with relation to the defendant Roth is evidence of guilt then every lawyer at the bar who accepts a referred case and obtains his fee from the lawyer referring the case, subjects himself to a hazard so great that one might as well surrender his license to practice than expose himself to the dangers of professional disgrace and being branded a criminal.

Many lawyers other than Kretske testified to having referred Federal matters to the defendant Roth, Sidney Baker (Tr. 749), Packard Barnes McCaughey & Schumaker (Tr. 749), Ross & Berchem (Tr. 796), William McCabe, State's Attorney of Will County, Illinois, and Charles Rob-

1202

son of Joliet, Illinois (Tr. 889), Irwin Clorfene, Assistant State's Attorney of Cook County (Tr. 890), Herbert H. Kennedy of the firm of Moses, Kennedy, Stein & Bachrach, testified that he conferred with Roth, with reference to Federal matters (Tr. 783).

There is nothing in the record that Roth was present at, or had knowledge of, or participated in any conversation with any person in connection with this case other than conversations and acts which were legal and ethical.

**United States v. Frank Hodorowicz, Mike Hodorowicz,
Peter Hodorowicz and Clem Dowiat.**

The opinion at page 9 says:

"It further appears that on June 3, 1938, Clem Dowiat and Frank and Peter Hodorowicz were indicted, charged with unlawful possession of distilled spirits. Roth was retained to represent the defendants, and while the case was pending in the District Court, Frank Hodorowicz and Kretske had a conversation in which Kretske stated that nothing could be done for Hodorowicz because 'There is too much heat.' Thereafter Frank Hodorowicz called at Glasser's office and complained that he was getting a raw deal to which complaint Glasser replied: 'Bailey says he will get my job if I don't put you away' and 'All the money in the world * * * can't do you no good at this time.'

"After this conversation Roth's services were dispensed with and other counsel represented the defendants in that case. They were found guilty and on appeal the judgment was affirmed. (*United States v. Hodorowicz, et al.*, 105 F. (2) 220.)"

Government witness Frank Hodorowicz testified at Tr. 302-303 as follows:

"Roth was my lawyer who was representing me in my case for a while after I was indicted. That is Alfred Roth the defendant here. I dispensed with Roth's service at that time. I left him go. A couple

of weeks after I put the bond on. That was after I had talked with Glasser. I did have occasion to go back to see Glasser after I released Roth from the case. I had a talk with him. I just asked him about a few lawyers. I don't just remember what lawyers. I asked him about two. I talked about Hess.

Q. What did you say to Glasser, and what did he say to you? A. Well, I says, I have to get a good lawyer to defend me, that is how bad I am in there, in trouble.

Q. What did you go to Glasser for? A. I was just down there to ask him about lawyers.

Q. Why did you go to Glasser and ask him about it? A. I just went in there to see what lawyer would be best.

Q. Well, what did Glasser say to you? A. I just don't remember what he said, and how he said.

The Court: What is your best recollection? A. Well, he says—I mentioned three lawyers, and he said, 'Well, any one of them are all right.'

Mr. Ward: Q. To refreshen your recollection—have you exhausted your recollection now, of what you said there, and of what Glasser said to you? A. I just talked about the case.

Q. Do you recall Glasser saying anything to you that Mr. Hess could do you a lot of good in that case? A. Well, I mentioned Hess, and he said, 'Hess could do you a lot of good.'

Q. Glasser said that to you? A. Yes, sir.

Q. Now, have you told us all the conversation you had with Glasser that you remember? A. Yes, sir.

Q. You can't remember any other? A. No, sir.

Q. Well, do you recall having a conversation with Glasser in which you said, it looked like you were in a lot of trouble over five cans of alcohol, and Glasser said you know, Frank, I like money, but this time, I can't do anything, do you recall that conversation? A. Well, he said for all the money in the world you can't do nothing on this case.

67, 100, 125, 150, 175, 200, 225, 250, 275, 300, 325, 350, 375, 400, 425, 450, 475, 500, 525, 550, 575, 600, 625, 650, 675, 700, 725, 750, 775, 800, 825, 850, 875, 900, 925, 950, 975, 1000

Q. Well, did he say what I just asked you? A. Maybe not just like that.

Q. Well, how? A. He said for all the money in the world he can't do you no good this time!"

He also testified at Tr. 302, as follows:

"After I was indicted in June of 1938 I saw Mr. Glasser in his office. I had a conversation with him. I talked to him. I went in there and asked him, I says, 'I think I am getting a raw deal around here,' and he says, 'Well I can't help it.' He says, 'You have to go to jail for five years,' I says 'For What?' Well, he says, 'Bailey says he will get my job if I don't put you away.' I don't know what else was said at that time, I was in there two or three times."

Here again it seems that this Honorable Court assumed and inferred that Roth had knowledge of the conversations between Glasser and Frank Hodorowicz. There is nothing in the record tending to show that Roth had knowledge of any conversation between Glasser and Frank Hodorowicz. The record fails to show as much as mention of Roth's name in any conversation Glasser had with Frank Hodorowicz. This Honorable Court quotes parts of conversations testified to by Frank Hodorowicz as having taken place between Glasser and him. The record is not clear as to whether Roth was discharged before or after the parts of the conversation quoted by this Honorable Court. It seems to support the conclusion that the conversation took place after Roth's discharge as Frank Hodorowicz's lawyer, as it appears that the conversation concerning the excerpt in the opinion took place at the time Frank Hodorowicz was trying to get Glasser to recommend a lawyer.

Roth testified that he conferred with Glasser shortly after he was engaged by Frank Hodorowicz and reported Glasser's attitude of a substantial penitentiary sentence in connection with a proposed plea of guilty (Tr. 858-859).

It was after this that Roth was discharged. If there was as much as a friendship, not to speak of a conspiracy, between Glasser and Roth, it would perhaps have resulted in at least Glasser suggesting that he saw no reason why he could not continue with Roth, who was representing him.

There is nothing in Roth's conduct in this case that is inconsistent with the conduct of any lawyer performing his duties as a lawyer.

Summarizing the above, the Court should have concluded:

(1) Roth stated to Judge Barnes in the Chrysler Sedan case facts which were sworn to in the answer and claim filed by his client.

(2) that he prepared conscientiously for trial with Swanson, Anthony Hodorowicz and Clem Dowiat in their case, viz., took statements from the clients wherein they denied their guilt, drew a diagram to be used on the trial of said cause and was ready to proceed for trial on the day set by the Court.

(3) that Roth was retained by Frank Hodorowicz in the Frank Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clem Dowiat case and thereafter was substituted as counsel by Edward J. Hess.

In view of all the above, this appellant most vigorously contends that there is no evidence to support the charges against him.

This Court in summing up the noteworthy and expressive circumstances as to the defendant, Roth, says at page 13 of the opinion:

“(2) The relations between Kretske and Roth and Roth's employment in liquor violations upon Kretske's recommendation.”

Kretske did refer to Roth some trial work in connection with the defense of liquor violations. No inference of guilt

can possibly be drawn from Roth accepting employment in defending such cases as he was also retained by many other lawyers to try cases for them in the Federal Court.

This Court further says:

“(5) The meeting of Kretske at Hodorowicz's store; the recommendation of Roth as attorney to defend; the payment of currency to Kretske; statement of Kretske 'not to worry, everything will be taken care of'; Glasser to receive part of the money; and the striking of the indictment.”

There is no evidence in the record that Roth knew of any hardware store conversation (which in fairness to Kretske it must be said, he denied). As above pointed out, the case was referred to Roth to try and he conscientiously prepared for trial as any other lawyer would have done.

This Court further says:

“(7) The indictment of Dowiat, Frank and Peter Hodorowicz; the retaining of Roth to defend; and his discharge after Hodorowicz was told by Glasser that 'all the money in the world would do him no good this time.' ”

As pointed out in connection with the discussion of *Frank Hodorowicz, et al.*, case, it appears that the evidence is not clear to support the circumstances as set out by this Honorable Court. Roth was retained shortly after their indictment to defend and shortly thereafter discharged and another lawyer substituted. There is no evidence in the record that Roth knew of the visits by Frank Hodorowicz to Glasser's office and of any conversations had with him. It cannot be said that his employment and discharge as a lawyer creates an inference of guilt.

This court further says:

“(11) The conduct and statements of Roth in the *Wroblewski* case.”

The only other matter touched upon by this Honorable Court in its opinion has to do with alleged conversations between Alexander Campbell and the defendant Roth in connection with the *Wroblewski* case in Indiana. The Court is respectfully urged to re-examine pages 62 and 63 of appellant's original brief and pages 13 and 16 of appellant's reply brief.

The law is clear that the *corpus delicti* of the crime cannot be proved by any admissions or statements of the accused in the absence of other competent proof. In *Naftzger v. United States*, 200 Fed. 494 (C. C. A. 48) the court at page 498 said:

"But it is contended that the evidence and testimony with reference to defendant's knowledge, such as his statement and acts subsequent to the purchase, tend to show that the stamps were stolen. It is not contended that defendant at any time made a confession of guilt. But, if he had made a confession out of court, such confession would not supply the requisite proof that the stamps had been stolen. A conviction upon extrajudicial confession, or acts or declarations of a prisoner, will not be sustained, without corroborative proof that the property was in fact stolen."

The court at page 499 further said:

"So that there is required evidence that the stamps had been stolen from the government, and such evidence must be other than things said and done by the defendant."

To the same effect, *Tofanelli, et al. v. United States*, 28 Fed. (2) 581 (C. C. A. 9), *Martin v. United States*, 264 Fed. 950 (C. C. A. 8), *Corpus Juris*, Vol. 16, Sec. 1579, *Wharton Cr. Ed.*, Sec. 325 and Sec. 623.

This appellant feels that upon reconsideration of the facts this court will grant the petition for rehearing and reverse the judgment of conviction as was done in *United*.

States v. Hain, et al., 114 Fed. (2) 566 (C. C. A. 2), and in *Kuhn, et al. v. United States*, 26 Fed. (2) 463 (C. C. A. 2), in which cases on a petition for rehearing, after affirmance of the judgments the court granted the petitions for rehearing on a reconsideration of the facts and reversed the judgments.

Appellant seriously and earnestly feels that a great injustice has been done him as the affirmance of the judgment in his case carries with it graver and much more serious consequences than the execution of the judgment and he exhorts this Honorable Court to reconsider the testimony against him, which he earnestly believes establishes his innocence and is not sufficient to convict.

WHEREFORE, this appellant respectfully submits to this Honorable Court that his petition for rehearing be granted and sincerely urges that the judgment against him be reversed.

Respectfully Submitted,

ALFRED E. ROTH,

Pro Se.

And afterwards, to-wit: On the thirty-first day of December, 1940, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court, an answer to petitions for rehearing, which said answer is in the words and figures following, to-wit:

131

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
DANIEL D. GLASSER,
Defendant-Appellant.

No. 7316

THE UNITED STATES OF AMERICA,
vs. *Plaintiff-Appellee,*
NORTON I. KRETSKE,
Defendant-Appellant.

No. 7317

THE UNITED STATES OF AMERICA,
vs. *Plaintiff-Appellee,*
ALFRED E. ROTH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

HONORABLE PATRICK T. STONE, JUDGE PRESIDING.

**APPELLEE'S ANSWER TO APPELLANTS'
PÉTITIONS FOR REHEARING.**

DEC 31 1940

J. ALBERT WOLL,
United States Attorney,

ROBERT J. CARR
Clerk

MARTIN WARD,
FRANCIS J. MCGREAL,
ROBERT C. EARDLEY,
Assistant United States Attorneys,

Counsel for Appellee.

IN THE
United States Circuit Court of Appeals
 FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

No. 7316

THE UNITED STATES OF AMERICA,
 vs. *Plaintiff-Appellee,*

NORTON I. KRETSKE,
Defendant-Appellant.

No. 7317

THE UNITED STATES OF AMERICA,
 vs. *Plaintiff-Appellee,*

ALFRED E. ROTH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
 STATES FOR THE NORTHERN DISTRICT OF ILLINOIS,
 EASTERN DIVISION.

HONORABLE PATRICK T. STONE, JUDGE PRESIDING.

**APPELLEE'S ANSWER TO APPELLANTS'
 PETITIONS FOR REHEARING.**

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now comes the United States of America, appellee herein, by J. Albert Woll, United States Attorney for the Northern District of Illinois, and for answer to the petitions for rehearing filed in the above entitled cause says:

We have carefully read the appellants' petitions for rehearing and are forced to the conclusion that it is an attempt on the part of the appellants to have the Court again consider the entire Record.

It has long been the established custom and rule, not only in this Circuit but in the many Circuits throughout the United States, that petitions for rehearing should only call to the Court's attention a particular fact overlooked by the Court or a particular case or rule of law, the construction of which was misapprehended by the Court. These petitions go well beyond that restriction and are but an attempt to have the Court once again pass on something which its Opinion has thoroughly settled.

The appellants cite, in their petitions for rehearing, certain cases and contend that the rule of law announced therein was misapplied by the Court to the facts in this case.

We must say that our examination of these cases convinces us that the Court did not misapprehend the rule of law announced therein, and any lengthy discussion of these particular cases would carry us into the same field of error in which we find the appellants.

It is, therefore, respectfully urged that the petition for a rehearing be denied.

Respectfully submitted,

J. ALBERT WOLL,
United States Attorney.

MARTIN WARD,
FRANCIS J. MCGREAL,
ROBERT C. EARDLEY,
Assistant United States Attorneys,
Counsel for Appellee.

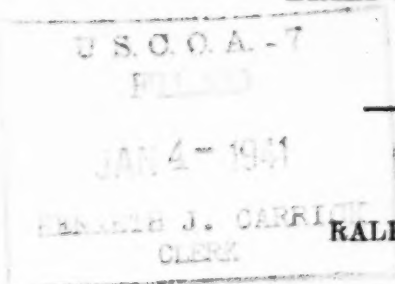
And afterwards, to-wit: On the fourth day of January, 1941, in cause No. 7315, there was filed in the office of the Clerk of this Court, a brief Amicus Curiae, which said brief is in the words and figures following, to-wit:

IN THE
United States Circuit Court of Appeals
 FOR THE SEVENTH CIRCUIT

No. 7315

THE UNITED STATES OF AMERICA,
 Plaintiff-Appellee,
 vs.
DANIEL D. GLASSER,
 Defendant-Appellant.

BRIEF AMICUS CURIAE



RALPH M. SNYDER,
 Amicus Curiae.

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT

No. 73,15

THE UNITED STATES OF AMERICA,	}
Plaintiff-Appellee,	
vs.	
DANIEL D. GLASSER,	}
Defendant-Appellant.	

BRIEF AMICUS CURIAE

MAY IT PLEASE THE COURT:

Some 25 years absence from experience in the State's Attorney's office may be not a strong recommendation for this suggestion of adding to the labors of your Honors.

I testified as a character witness for Glasser, attended the hearing of arguments in this Court, and since the handing down of the opinion herewith have re-read the record.

In determining what my duty is with respect to Mr. Glasser, with whose work I was more than usually

informed during the administrations of Governor-Elect Green and Judge Igoe, I have not given Glasser the benefit of any assumptions. He occupied such a position of trust in the Judicial Department, prosecuting a large percentage of the total cases tried during his four years incumbency, that his every act must stand the pitiless light of searching inquiries.

The Government said:

“There is not anything in this indictment that says anybody paid Glasser a bribe.” (Rec. 154.)

The theory of the Government's case was that this was a conspiracy to solicit promises, and it was pointed out that each paragraph of the indictment started out with the word “solicited”. (Rec. 156.) There is not a particle of evidence that Glasser ever, directly or indirectly, solicited a bribe, promises, or anything of value for his personal behalf, or anything other than information and leads in connection with the cases he was prosecuting.

Thus this Court is confronted with a most general charge of conspiracy, specific allegations as to certain things which were not proven, and on the other hand, the testimony of three United States District Judges who testified not only as to their observation of the efficiency with which Glasser conducted his office (Rec. 717, 737, 890), but specifically as to the cases in which he had appeared before them. One of these Judges was Glasser's supervisor during most of the time Glasser served as Assistant District Attorney, and during all of the time that any of the cases involved in this record were being handled.

The testimony of Judge Igoe is categorical. He said:

“The various actions of my Assistant, Mr. Glas-

ser, were taken up by him and discussed with me, and I knew all of the orders that were rendered either before or shortly after they were rendered, and they had my approval." (Rec. 895.)

Some strong motive has actuated the prosecution of Glasser, bitterly and unfairly carried on by the Government, as instanced by its denial to him of an opportunity to examine the records which had been specifically granted him by the trial court (Rec. 979, 983), on the flimsy excuse that he did not have his lawyer with him. These motives may be gleaned from the testimony of Judge Igoo, who testified:

"Soon after my appointment as United States Attorney, I became convinced that the Alcohol Tax Unit was not looking after the big operations—they were looking for the little people, and they constantly flooded our office with small factory people who were cookers, or people who rented some old store or such. They never would bring in the individual who really operated the still." (Rec. 895.)

While an objection was sustained at this point, additional testimony along the same lines was given, and this Court can take judicial notice of the wide publicity which has existed not only in Chicago, but in Washington as to the running feud between the Treasury and Legal Departments with respect to investigations and reports by the Treasury Department of Violations of the Alcohol Tax Laws. This feud resulted in trips between Chicago and Washington, and was brought to a bitter head by Glasser's duty to report to the Court certain alleged violations by Mr. Yellowley, resulting in Mr. Yellowley's statement:

"Mr. Glasser, I will get you if it is the last thing I ever do." (Rec. 948.)

While this statement may be dismissed as made in the heat of anger, the acts of certain overly aggressive agents, in this mosaic of intrigue and charges and counter-charges, cannot be ignored. One example should suffice to put the Court on inquiry.

On December 9, 1938, one Paul Svek, who had theretofore twice been convicted as a result of Glasser's prosecution of him, and was then under sentence of two years, and out on bond pending appeal, was arrested by the investigators for the Alcohol Tax Unit and taken to the office of said Unit. He was there told: "They would let me (Svek) go if I did this telephoning." (Rec. 565.) That he called Glasser on the telephone, at an unlisted telephone number which the agents gave him, with the agents beside him at the office of the Alcohol Tax Unit. Svek asked Glasser to help him get out of his present difficulties and offered money as an inducement. Mr. Svek did not admit the offering of money. This appears from the testimony of Inspector McFarland of the Federal Bureau of Investigation. (Rec. 584.) Here was unmitigated and inexcusable attempt at entrapment.

This Court must have been impressed with the frankness with which Glasser moved when any reflections were made upon the Department of Justice. Both Judge Igoe and Judge Barnes testified to his conferences with them on any matters which involved matters within their respective jurisdictions.

In the Svek matter Glasser succeeded in getting Special Agent McFarland to listen to the ensuing conversation between Svek and Glasser when Svek was summoned to Glasser's office. This complete conversation appears on page 584 of the record. It is enough to say that Svek admitted that he had been told to

call Mr. Glasser by Agents Casserly and Harks (Rec. 585); that Casserly gave him the telephone number and he admitted that he had never paid any money or made any promises. (Rec. 584.)

Not only is there a complete absence of anything in the record to show that Glasser ever directly or indirectly benefited from any bribes that may have been passed, but there is no showing that as a result of any acts on the part of any one else, that Glasser was derelict in respect to any of his duties. The specific instances that were called up were adequately disposed of by the testimony of the agents and the Federal Judges who testified, including Judge Igoe, who was Glasser's superior.

In a record where certain of the defendants did not appeal and where the conviction stands with respect to them, if there was any evidence, concrete, specific or otherwise, of Glasser's wrongdoings, it would have been brought forward. If there were any truth in the charges it should have been available, because practically all of the government's witnesses, aside from agents, were men whom Glasser had previously prosecuted and convicted. Most of these witnesses were brought back from the penitentiary and could appreciate any inducements the Government might make. With this ideal setup, the government produced no creditable testimony against Glasser, but fell back on its general charges of conspiracy against a group—some of whom have not appealed.

The Court in its opinion has made a summary of most of the outstanding incidents. In even a 23-page opinion the Court could, of course, not enumerate all of the facts. To evaluate such facts as it did consider the complete story as set forth in Glasser's Petition for Rehearing should be considered.

The Government's answer to the Petition for Rehearing does not attempt to assist the Court in the comprehension of the real facts, but dismisses the entire matter in so cavalierly a manner as to justify Glasser's friends to impose the burden of reading an additional document in the hope that justice may be done a prosecutor, whom Judge Barnes described as "an excellent prosecutor, possibly too good for the criminals." (Rec. 720.)

I have not argued or relied upon any of the so-called technical defenses. My duty to this Court and to one who was one of the ablest attorneys in the department of justice, is performed in suggesting that there is no evidence to sustain the conviction, but that the overwhelming weight of testimony shows that Glasser in a particularly important and difficult situation, surrounded as he was by charges and counter-charges, largely emanating from Washington, and bitterly reflected in the public press, performed his duties conscientiously and as capably as he could have, and consulted freely with his superiors and those entitled to be fully advised.

It is impossible for me to conceive that three Judges in the same building, all of wide experience, astute judges of character as they are, should voluntarily take the witness stand in behalf of the one defendant Glasser, without being sure of their facts and their judgment of the character of the man against whom these charges were brought. It is not that such men were willing to testify, or that any attempt is made to escape behind the folds of the judicial robe, but the absence of any creditable proof against Glasser which calls for this document.

If Glasser stands convicted of these charges, then

no man in high position is any safer in the United States than in any of the other countries against whom Glasser drew his sword in the last war.

Respectfully submitted,

RALPH M. SNYDER,
Amicus Curiae.

And afterwards, to-wit: On the seventh day of January, 1941, in cause No. 7315, there was filed in the office of the Clerk of this Court a memorandum in support of petition for rehearing of appellant Glasser, which said memorandum is in the words and figures following, to-wit:

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA.	}
<i>Plaintiff-Appellee,</i>	
vs.	
DANIEL D. GLASSER,	
<i>Defendant-Appellant.</i>	

**MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING
OF APPELLANT GLASSER.**

JOHN ELLIOTT BYRNE,
Attorney for Appellant Glasser.

DANIEL D. GLASSER,
Petitioner, Pro se.

IN THE
United States Circuit Court of Appeals
FOR THE SEVENTH CIRCUIT.

No. 7315

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL D. GLASSER,
Defendant-Appellant.

MEMORANDUM IN SUPPORT OF PETITION FOR
REHEARING OF APPELLANT GLASSER.

A recent decision of the Supreme Court has, we feel, so important a bearing upon the Glasser petition for rehearing as to require its presentation to the Court of Appeals in this Memorandum. That case is *United States v. Falcone*, decided December 9, 1940, reported in 61 S. C. Rep. 204.

In that case the Supreme Court held that one is not guilty of conspiracy if he has no knowledge of the conspiracy, even though his act may have furthered the object of the conspiracy. This rule of law, we respectfully submit, exactly covers the situation of Glasser here. Indeed, Glasser's situation is much more favorable than that of *Falcone, et al.*; they were guilty of an immoral (if not an illegal) act, viz.: selling sugar to an illicit distillery, with knowledge that the latter was using the

sugar for illegal purposes. In the case at bar Glasser, we respectfully submit, committed no immoral act, much less an illegal or criminal one. If we are correct in our understanding of the Court's opinion in the present case, the import of the opinion is that the verdict of the jury may be justified on the theory not that there was any wrongful act by Glasser in furtherance of the conspiracy, or otherwise, but that the inferences from the alleged wrongful acts of some of the other defendants cast a presumption of guilt upon Glasser, because the result of some of the prosecutions conducted by Glasser apparently coincided with the purposes of some of the other defendants.

Notwithstanding the fact that the Court in its opinion evidently gave careful study to the evidence at the trial, we trust that our Petition for Rehearing has shown that Glasser's action in every case relied upon by the prosecution was proper, and in accordance with a desire and purpose to perform his duties conscientiously.

In the *Falcone* case, *supra*, the Supreme Court held directly that acts in furtherance of the conspiracy were not proof of knowledge of the conspiracy, much less of guilty participation therein. To an even greater degree is such proof lacking in the present case, where the very most that can be said of the evidence is that it might be contended that the result of certain prosecutions (a few out of thousands) conducted by Glasser eventuating in dismissals, no-bills, etc., were coincidentally in accordance with the purposes of a conspiracy, such as may have existed between Kaplan and Horton, with which, however, Glasser had nothing to do and of which he had no knowledge.

The language of the Supreme Court in the *Falcone* case is most emphatic and definite upon this proposition. The Court says, at page 205:

"We did not bring the case here to review the evidence, but we are satisfied that the evidence on which

the Government relies does not do more than show knowledge by respondents that the materials would be used for illicit distilling if it does as much in the case of some. In the case of Alberico, as in the case of Nicholas Nole, the jury could have found that he knew that one of their customers who is an unconvicted defendant was using the purchased material in illicit distilling. But it could not be inferred from that or from the casual and unexplained meetings of some of respondents with others who were convicted as conspirators that respondents knew of the conspiracy. The evidence respecting the volume of sales to any known to be distillers is too vague and inconclusive to support a jury finding that respondents knew of a conspiracy from the size of the purchases even though we were to assume what we do not decide that the knowledge would make them conspirators or aiders or abettors of the conspiracy. Respondents are not charged with aiding and abetting illicit distilling, and they cannot be brought within the sweep of the Government's conspiracy dragnet if they had no knowledge that there was a conspiracy."

In the Falcone case there was admittedly a conspiracy; in the present case there was allegedly a conspiracy in which at least Kaplan and Horton were involved. In the Falcone case the question was whether or not Falcone, *et al.*, had knowledge of the conspiracy and participated therein. So here the question is whether or not Glasser had knowledge of the conspiracy and participated therein. In the Falcone case there was proof of wrongful acts and realization of pecuniary profit therefrom by Falcone, *et al.* In the present case there is no proof of wrongful acts of Glasser or any pecuniary profit to him from any of his acts. How then can the prosecution consistently contend that Glasser had knowledge of the conspiracy, much less was a participant therein?

We respectfully suggest that the alleged acts of Horton and Kaplan, and possibly others, has confused the prosecution here into assuming a connection of Glasser therewith. In the Falcone case the Supreme Court held that the

prosecution was in error in assuming the connection of Falcone, *et al.*, with the conspiracy there involved, notwithstanding that the evidence against Falcone, *et al.*, was far stronger than that in the present case against Glasser.

The Falcone decision also furnishes incidental support to our contention throughout that the testimony of Raubunas that he saw Kretske, Kaplan and Glasser together in an automobile, was insubstantial and to be accorded no weight. It will be noted that in the quotation above set forth the Supreme Court states that knowledge of the conspiracy could not be inferred from the fact that the sugar seller knew the sugar was to be used in illicit distilling, much less could such knowledge be inferred "*from the casual and unexplained meetings of some of the respondents with others who were convicted as conspirators.*" (Italics ours.)

We respectfully call this court's attention to the extensive footnote in the Falcone case setting forth in considerable detail numerous meetings between Falcone, *et al.*, and the admitted conspirators, as well as a large number of other acts, transactions and events, all of which we respectfully submit far surpass in their tendency to show guilty knowledge any of the trivial and coincidental circumstances suggested by the prosecution in the present case as creating a suspicion of guilt on Glasser's part.

We respectfully suggest that inasmuch as the Government in its answer to Glasser's Petition for Rehearing has not made the slightest intimation that any of our statements as to the evidence in the record are incorrect, that such answer may properly be considered by this Court as an admission of the accuracy of our statements in the Petition for Rehearing.

CONCLUSION.

In conclusion, therefore, we respectfully submit that the Petition of appellant Glasser for a Rehearing should be granted.

Respectfully submitted,

JOHN ELLIOTT BYRNE,

Attorney for Appellant Glasser.

DANIEL D. GLASSER,

Petitioner, Pro se.

And afterwards, to-wit: On the twenty-third day of January, 1941, the following further proceedings were had and entered of record, to-wit:

Thursday, January, 23, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

7315	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Daniel D. Glasser, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, East- ern Division.
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It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

7316	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Norton I. Kretske, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, East- ern Division.
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It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

7317	The United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i> Alfred E. Roth, <i>Defendant-Appellant.</i>	}	Appeal from the District Court of the United States for the Northern District of Illinois, East- ern Division.
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It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

And afterwards, to-wit: On the twenty-seventh day of January, 1941, in causes Nos. 7315, 7316 and 7317, there was filed in the office of the Clerk of this Court, a praecipe for record on certiorari, which said praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

United States of America,	} Nos. 7315,
<i>Plaintiff-Appellee,</i>	
<i>vs.</i>	
Daniel D. Glasser, Norton I. Kretske, and	
Alfred E. Roth,	
<i>Defendants-Appellant.</i>	7316, 7317.

PRAECIPE FOR RECORD ON CERTIORARI.

To: Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

You will please cause to be prepared and certified sufficient copies of the record in the above cause for use on petition for certiorari in the Supreme Court of the United States, including therein the following:

1. The record as printed for use in the Circuit Court of Appeals for the Seventh Circuit.
2. Order consolidating appeals and that cause be heard on one record, filed July 10, 1940.
3. Certificate to exhibits filed August 2, 1940.
4. Supplemental certificate to exhibits filed August 6, 1940.
5. Petition for order Re: missing exhibits, filed August 7, 1940.
6. Answer to petition for order on United States Attorney filed August 12, 1940.
7. Reply to answer, etc. filed August 12, 1940.
8. Additional answers filed August 13, 1940.
9. Order Re: transmission of exhibits entered August 14, 1940.
10. Additional Assignment of Error, filed August 27, 1940.

11. Motion to suppress brief of appellant Glasser, filed September 4, 1940.
12. Points in support thereof, etc. filed September 4, 1940.
13. Affidavit Re: brief, etc. filed September 4, 1940.
14. Memorandum in support, filed September 11, 1940.
15. Order Re: Motion to suppress brief, entered September 13, 1940.
16. Opinion by Hon. Otto Kerner, C. J. filed December 13, 1940.
17. Judgments affirming entered December 13, 1940.
18. Petitions for rehearing filed December 24, 1940.
19. Answer to Petitions for rehearing filed December 3, 1940.
20. Brief Amicus Curiae filed January 4, 1941.
21. Memorandum in support of petition for rehearing filed January 7, 1941.
22. Order denying petitions for rehearing, entered January 23, 1941.

Daniel D. Glasser,
Norton I. Kretske,
Alfred E. Roth,

Defendants-Appellants.

Endorsed: Filed Jan. 27, 1941. Kenneth J. Carrick,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

I, Kenneth J. Carriek, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed, made in accordance with the praecipe filed on the twenty-seventh day of January, 1941, in the following entitled causes:

The United States of America,
Plaintiff-Appellee,
7315 vs.

Daniel D. Glasser,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee,
vs.

Norton I. Kretske,
Defendant-Appellant.

The United States of America,
Plaintiff-Appellee,
7317 vs.

Alfred E. Roth,
Defendant-Appellant.

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 7th day of February, A. D. 1941.

(Seal) Kenneth J. Carrick,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

No. 31825

THE UNITED STATES.

vs.

DANIEL D. GLASSER, NORTON I. KRETSKE, ALFRED E. ROTH,
ANTHONY HORTON alias TONY HORTON, LOUIS KAPLAN

We, the Jury, find the Defendants, Daniel D. Glasser, Norton I. Kretske, Alfred E. Roth, Anthony Horton alias Tony Horton, Louis Kaplan guilty as charged in the indictment.

Walter Wilson, Leslie V. Alexander, Arthur A. Campbell, Virginia R. Haven, Cornelius Jacobus, William J. Jungels, Mildred W. Kelly, Laura H. Lawson, Bernice G. Lund, Theresa Rew, Margaret W. Rieser, Edward F. Young.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 30

ORDER ALLOWING CERTIORARI—Filed April 7, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

ORDER ALLOWING CERTIORARI—Filed April 7, 1941

No. 31

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

1245

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

ORDER ALLOWING CERTIORARI—Filed April 7, 1941

No. 32

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4878)

No. ~~7-44~~ 50

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1940

DANIEL D. GLASSER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

HOMER CUMMINGS,

WILLIAM D. DONNELLY,

Counsel for Petitioner.

INDEX.

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement of case	4
Specification of errors to be urged	7
Reasons for granting the writ	8
1. Petitioner, by action of the trial court and through no fault of his own was deprived of effective assistance of counsel and of due process of law in violation of the Fifth and Sixth Amendments	8
2. The jury was packed by the illegal delegation of their duties by the Clerk and the Jury Commissioner, who violated the petitioner's right to an impartial trial and deprived him of his liberty without due process of law	12
3. The record fails to disclose that there was an indictment returned against this petitioner by any grand jury in open court or otherwise	15
4. Improper conduct of the prosecuting attorney clearly violated the right of petitioner to a fair and impartial trial	19
5. The action of the judge effectually deprived petitioner of the presumption of innocence and denied him a fair and impartial trial	24
6. The record is utterly devoid of evidence to support the verdict against petitioner	31
The evidence as reviewed by the court below	32
Total lack of evidence of knowledge on the part of petitioner of the alleged conspiracy	47
7. A charge of conspiracy to commit a substantive offense, which itself necessarily involves concerted action—that is, a charge of conspiracy to conspire—will not lie; and, as such is the charge, if any is here made, the indictment is fatally defective	50
Appendix	53

CITATIONS

Cases:

	Page
<i>Agnew v. United States</i> , 165 U. S. 36	14
<i>Albizu v. United States</i> , 88 F. 2d 138	13
<i>Anderson v. Treat</i> , 172 U. S. 24	12
<i>Angle v. United States</i> , 172 Fed. 658	16
<i>Berger v. United States</i> , 295 U. S. 78	23
<i>Burns v. United States</i> , 287 U. S. 216	15
<i>Charge to Grand Jury</i> , Fed. Cas. No. 18,255	16
<i>Dunn v. United States</i> , 238 Fed. 508	14
<i>Ex Parte Bain</i> , 121 U. S. 1	16
<i>Gebardi v. United States</i> , 287 U. S. 122	51
<i>Hyman v. Eames</i> , 41 Fed. 676	13
<i>In Re Petition for Special Grand Jury</i> , 50 F. 2d 973	14
<i>Johnson v. Zerbst</i> , 304 U. S. 458	11
<i>Klemmer v. Railroad</i> , 163 Pa. 521	14
<i>Langnes v. Green</i> , 282 U. S. 531	15
<i>Ledbetter v. United States</i> , 108 Fed. 52	16, 17, 18
<i>Neal v. Delaware</i> , 103 U. S. 370	13
<i>Ogden v. United States</i> , 112 Fed. 523	13
<i>People v. Bopp</i> , 279 Ill. 184	11
<i>People v. Rocco</i> , 209 Cal. 68	11
<i>People v. Rose</i> , 348 Ill. 214	11
<i>People ex rel. Denny v. Traeger</i> , 372 Ill. 11	13
<i>Powell v. Alabama</i> , 287 U. S. 45	11
<i>Quercia v. United States</i> , 289 U. S. 466	26
<i>Rainey v. The People</i> , 8 Ill. (3 Gil.) 71	16
<i>Renigar v. United States</i> , 172 Fed. 646	16, 17
<i>Rodriguez v. United States</i> , 198 U. S. 156	14
<i>Shinn v. State</i> , 93 Ark. 290	17
<i>Smith v. Texas</i> (U. S. Sup. Ct., Nov. 25, 1940), 85 L. Ed. 106	15
<i>State v. Jenkins</i> , 32 Kan. 477	14
<i>State v. Newhouse</i> , 29 La. Ann. 824	14
<i>Terrell v. United States</i> , 6 F. 2d 498	26
<i>Thornhill v. Alabama</i> , 310 U. S. 96	50
<i>United States v. Brookman</i> , 1 F. 2d 528, aff'd. 8 F. 2d 803	14
<i>United States v. Chaires</i> , 40 Fed. 820	13
<i>United States v. Dietrich</i> , 126 Fed. 664	51

INDEX

iii
Page

<i>United States v. Falcone</i> (U. S. Sup. Ct., Dec. 9, 1940), 85 L. Ed. 143	41, 47
<i>United States v. Gale</i> , 109 U. S. 65	14
<i>United States v. Manton</i> , 107 F. 2d 834	50
<i>United States v. Murphy</i> , 224 Fed. 554	13, 14
<i>United States v. Sager</i> , 49 F. 2d 725	51
<i>Walker v. United States</i> , 93 F. 2d 383, cert. denied 303 U. S. 684	14
<i>Wight, Petitioner</i> , 134 U. S. 136	18
<i>Williams v. United States</i> , 275 Fed. 129	14
<i>Wilson v. Clement</i> , 126 Fed. 808	13
<i>Wilson v. United States</i> , 104 F. 2d 81	14
<i>Yundt v. The People</i> , 65 Ill. 372	16
<i>Statutes:</i>	
Ill. Rev. Stat. (1939), c. 78:	
Sec. 1	13
Judicial Code:	
Sec. 275, 28 U. S. C. sec. 411	13
Sec. 276, 28 U. S. C. sec. 412	13
R. S., sec. 1025, 18 U. S. C. sec. 556	14
U. S. C.:	
Title 18:	
Sec. 88 (Criminal Code, sec. 37)	50
Sec. 91 (Criminal Code, sec. 39)	50
Title 28:	
Sec. 411 (Judicial Code, sec. 275)	13
Sec. 412 (Judicial Code, sec. 276)	13
<i>Texts and Miscellaneous:</i>	
1 Bishop, Criminal Proceeding, sec. 1160	18
3 Blackstone, Commentary, 409	19
Canon of Professional Ethics No. 6	11
Chicago American, September 29, 1939	6
Criminal Appeals Rules, Rule XI	2
Department of Justice Circular No. 2743, August 28, 1935	4
Rule 16, District Court for the Northern District of Illinois	20

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No.

DANIEL D. GLASSER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

Daniel D. Glasser, petitioner, prays that a writ of certiorari be issued to review the decree of the United States Circuit Court of Appeals for the Seventh Circuit, entered in the above cause on December 13, 1940, affirming the judgment of the United States District Court for the Northern District of Illinois.

Opinions Below.

The trial court filed no opinion. The opinion of the Circuit Court of Appeals (R. 1117-1139) is reported in 116 F. (2d) 690.

Jurisdiction.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered on December 13, 1940 (R. 1139-1140). Petitioner filed a petition for rehearing which was denied on January 23, 1941 (R. 1239). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules, promulgated by this Court May 7, 1934. |

Questions Presented.

1. Whether the appointment by a trial court of the previously retained counsel of one defendant (petitioner herein) to act as well as counsel for a co-defendant whose defense involves adverse and conflicting interests does not plainly violate the right of the defendant under the Sixth Amendment to have effective assistance of counsel, particularly where it appears that such appointment was made over defendant's objections on this ground and in fact resulted in plain prejudice to defendant.

2. Whether the trial court did not abuse its discretion in overruling an uncontradicted and undenied affidavit in support of motion for a new trial which stated: (1) That the jury commissioner and clerk with respect to approximately one-half of the names placed in the jury box had unlawfully delegated to a private society their exclusive duty to make up the jury list; (2) that said list so made up totally and systematically excluded all other persons otherwise qualified who were not members of said society; (3) that only those members of said private society who had attended its jury classes and been lectured on the views of the prosecution were placed on the jury list from which the petit jury was picked; and (4) that as a result thereof a

jury was picked which was biased, prejudiced and previously instructed.

3. Whether a defendant may properly be tried and sentenced for an infamous crime in the absence of a showing that an indictment has been returned by a grand jury in open court.

4. Whether the grossly unfair action and conduct of the trial judge at the trial did not deprive the defendant of a fair trial and of the benefit of the presumption of innocence.

5. Whether the misconduct of the prosecuting attorney, permitted and condoned by the trial judge, was such a deviation from the usual trial procedure and so prejudicial to the defendant as to have deprived him of a fair and impartial trial;

6. Whether the total lack of evidence of guilt of petitioner did not require reversal of the judgment;

7. Whether the alleged indictment upon which petitioner was tried: (a) Charged any violation of the laws of the United States, or (b) was sufficiently definite and certain to inform petitioner of the charge.

8. Whether the jury commissioners were not required to follow the statute of Illinois with reference to the qualification of jurors at the time of the selection of the grand jury.

Statutes Involved.

The statutes involved are:

U. S. C., Title 18, sec. 88 (Criminal Code, sec. 37).

U. S. C., Title 18, sec. 91 (Criminal Code, sec. 39).

U. S. C., Title 28, sec. 411 (Judicial Code, sec. 275).

U. S. C., Title 28, sec. 412 (Judicial Code, sec. 276).

Illinois Rev. Stats., pp. 1908, 1913.

They appear in the appendix, pp. 53-54.

Statement of the Case.

The petitioner, Daniel D. Glasser, was an Assistant United States Attorney for the Northern District of Illinois from March 13, 1935, until June 23, 1939 (R. 186-187). He was in charge of prosecution of all liquor violation cases at Chicago from June, 1935, to April, 1939. In the course of this work, he handled almost one-fourth of all the cases in that office in which there were 18 Assistant United States Attorneys (R. 1038).

Unfortunately, particularly for Glasser, there arose a sharp diversity as to policy between the office of the District Attorney and the local Alcohol Tax Unit. The former, in accordance with the thought of at least one of the district judges (R. 719) and the announced policy of the Department of Justice¹ sought to strike at the roots and convict responsible individuals rather than their agents and other petty violators (R. 895-896, 897). In some instances, this diversity of policy caused the District Attorney's office to make independent investigations on its own behalf. As a result, there was constant friction and two-thirds of the agents of the Chicago Alcohol Tax Unit were transferred elsewhere (R. 898-899, 905). Finally, in the trial of a minor bootlegger for transportation, it appeared that information as to major wholesale vendors available to the Alcohol Tax Unit had been by it withheld from the office of the District Attorney (R. 719, 898). The Alcohol Tax Unit representatives, called for explanation by Judge Barnes, asserted that an incompetent agent had made a poor investigation report as to the major violators and therefore the report had not been transmitted to the District Attorney. In the course of this explanation, however, it appeared that the agent who had ven-

¹ Department of Justice Circular No. 2743 to all United States Attorneys, dated August 28, 1935 (Orig. Ex. 199, R. 913).

tured to make this investigation and report had been discharged (R. 720).

Later, the April, 1937, grand jury² required the appearance of Yellowley, District Supervisor of the Alcohol Tax Unit (R. 946). After his appearance and before the discharge of the grand jury, Yellowley solicited the foreman thereof to come to his hotel room. This resulted in contempt proceedings against Yellowley by the District Attorney, handled by petitioner (R. 1031). The answer of Yellowley admitted the impropriety of his acts and that the conference related solely to the inquiry then being made by the grand jury.³ (R. 1032-1034). It is not denied that, subsequently, Yellowley threatened him with the statement (R. 948):

Mr. Glasser, I will get you if it is the last thing I ever do.

Thereafter, on December 9, 1938, agents under Yellowley arrested one Paul Svec, who was then appealing from a two-year sentence on a conviction obtained by Glasser. He was taken to their office, there furnished with petitioner's unlisted phone number and told to call petitioner and have him guarantee to the agents payment of money to them (R. 584-585, 932-933). This attempt at entrapment failed and was fully disclosed by the prompt action of Glasser in secreting an agent of the Federal Bureau of Investigation in his office where the agent overheard a conversation with Svec in which the latter confessed and said (R. 565):

The agents told me they would let me go if I did this telephoning. (See R. 583-585, 932-935).

Svec further stated that he had never before tried to fix his cases (R. 566, 584). This conversation, curiously

² This jury made a report emphatic in its criticism of the policy and conduct of the Alcohol Tax Unit above referred to (R. 789-795). Offer of proof of this report was denied (R. 795).

³ Offer of proof of this petition and answer was denied (R. 1031-1034).

enough, is set forth in the indictment as overt act No. 22 (R. 19).

Shortly after the appointment of the new District Attorney, Glasser, among a number of other assistants, resigned.⁴

Petitioner, with four others, was tried on an indictment, filed September 29, 1939, containing two counts, the first of which was dismissed (R. 38, 715). The second, in substance, charged the petitioner and others with conspiracy to defraud the United States of the conscientious services of an Assistant United States Attorney by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States with the intent to influence his decision and action on certain cases which were at times brought before him in his official capacity (R. 22, 28).

At the time of the discharge of the grand jury, September 29, 1939, there was no record of the return of any indictment against this petitioner. Motion to quash on this ground was denied (R. 42).

On the day of the selection of the jury, in spite of objection by petitioner, made personally and by his counsel that his interests were adverse (R. 180-181), the court appointed the attorney who had been theretofore retained by petitioner and was representing him alone, to act also as counsel for co-defendant Kretske (R. 183).

The underlying theory of the Government's case is very vague (R. 154-155, 160). As stated by the District Attorney, it was that "there was a conspiracy on foot to solicit certain persons to make promises" (R. 154).

⁴ At this time the District Attorney, W. J. Campbell, paid high tribute to the record of Glasser, saying "Mr. Glasser has the best records of convictions of anyone in this office and his record in alcohol cases is the best in the country. Since I have been in office, he has prosecuted ninety-nine cases and lost only one. He hasn't lost a jury case in three and one-half years." Chicago American, September 29, 1939.

The proof by the Government attempted merely to show that money for the purported corruption of petitioner or others (third persons) had been paid by accused persons to certain of petitioner's co-defendants for the promised "fixing" of their cases. In addition, the Government showed merely that as to some of these accused persons the United States Commissioner dismissed, or the grand jury voted no-bills. However, neither the United States Commissioner nor any grand juror—nor, indeed, any other person—testified to any unfaithful conduct on the part of the petitioner. See Point 6 below wherein these matters are set forth briefly.

Nevertheless, all of the defendants were found guilty. Petitioner filed a motion for new trial and in arrest of judgment (R. 1046) supported by an uncontradicted affidavit to the effect that by reason of total and systematic exclusion of persons otherwise qualified, he did not have a trial by jury free from bias, prejudice and prior instruction (R. 1049-1051). This motion was denied and exceptions were noted (R. 103). Petitioner was sentenced to confinement in the penitentiary for fourteen months (R. 1068).

The Circuit Court of Appeals affirmed (R. 1139-1140). An analysis of the gross misconceptions of the court below as to the facts of record is set forth in chart form hereinafter at page 33.

Specification of Errors to be Urged.

The Circuit Court of Appeals erred:

1. In failing to hold that the appointment by the trial court of petitioner's counsel to act as well as counsel for a co-defendant having conflicting interests substantially impaired the constitutional rights of the petitioner to have effective assistance of counsel and to due process of law.

2. In holding that the trial court did not abuse its discretion in denying petitioner's motion for new trial based on an uncontradicted affidavit affirmatively showing and offering to prove illegal and prejudicial composition of the trial jury.

3. In holding that the record shows that the indictment was returned into open court by a grand jury.

4. In holding that the acts and conduct of the trial judge did not deprive the petitioner of the benefit of the presumption of innocence and the right to a fair trial.

5. In holding that the misconduct of the prosecuting attorney, permitted and condoned by the trial judge, did not require reversal of the judgment.

6. In failing to hold that there was no evidence in the record to support the judgment and that therefore reversal of the judgment was required.

7. In failing to hold that the indictment was insufficient in law because it is vague, indefinite, and fails to charge a violation of law which may properly be made the basis of a conspiracy count against such an officer.

8. In failing to hold that the jury commissioner and the clerk of the district court violated the laws of the State of Illinois and of the United States with reference to the selection of the grand jury.⁵

Reasons for Granting the Writ.

1. *Petitioner, by action of the trial court and through no fault of his own, was deprived of effective assistance of counsel and of due process of law in violation of the Fifth and Sixth Amendments.*—The Circuit Court of Appeals has

⁵ For purposes of brevity, this specification is not argued in this petition. If certiorari is granted, however, it will be urged in the brief of petitioner.

sanctioned a departure from the accepted and usual course of judicial proceedings by the district court involving an important question of federal law not yet settled by this Court.

The record shows that, as a result of the action of the court in appointing his counsel to act as counsel for another co-defendant, petitioner was deprived of the full and effective assistance counsel would otherwise have afforded him. This action of the court was assigned as error by the petitioner (Assg't No. 8, R. 116). The Circuit Court of Appeals merely held the appointment was not "such an error as to warrant reversal" (R. 1131).

This deprivation by the trial court prevented petitioner from adequately safeguarding his right to exclude incompetent evidence and from fully exercising his right to cross-examine the witnesses for the prosecution. The error was highly prejudicial and required reversal.

Some time before his trial, Glasser had retained as his attorney William Scott Stewart, an eminent member of the local bar. On the day set for trial, counsel for petitioner's co-defendant, Kretske, filed a motion for continuance (R. 173). This motion was denied and another attorney was appointed for Kretske. The following day this was vacated (R. 96-97). Thereupon, the court asked whether there was any reason why petitioner's attorney could not represent Kretske (R. 180). Mr. Stewart immediately stated that there was inconsistency in the defense of petitioner and Kretske. He made specific reference to the affidavit earlier filed in support of petitioner's motion for severance in which those inconsistencies had been pointed out (R. 180, 171). Petitioner further emphatically voiced the same objection in person, stating that he wished that he have exclusive representation by his lawyer (R. 181). Despite these objections, the court appointed Stewart to represent Kretske as well

(R.97). Having set out the objections, Stewart could do no more, and he accepted this appointment only upon insistence of the court (R.180, 181, 183) and thereafter represented petitioner and his co-defendant, Kretske, throughout the trial.

The only evidence presented against petitioner (legally inadmissible but allowed to go to the jury without objection) consisted of testimony by third persons as to conversations with third parties in which they agreed to pay money to Kretske or others for the alleged purpose of obtaining favorable consideration from petitioner—in which conversations Kretske was alleged to have said that the money, or part of it, would be paid over to petitioner. (Kretske denied participation in any of these conversations (R. 799).) This testimony (regardless of weight) was competent and not subject to objection as against Kretske. As against petitioner, however, its incompetency is apparent unless and until a conspiracy was shown. No such conspiracy was ever shown. Nevertheless, no objection on behalf of petitioner was made to the testimony by Stewart. His reason for refraining from objection necessarily must have been a desire to protect Kretske. Had objection been made on behalf of petitioner alone and not of Kretske, the jury would probably have thought that Kretske was admitting the truth of the testimony; on the other hand, the same type of limited objections might have prejudiced petitioner upon inference by the jury that petitioner, who was not present at the conversation, was contesting their verity. The absence of any objection necessarily led the jury to regard the evidence as of equal materiality and weight against petitioner as against Kretske.

One example will suffice to show the substantial injury to petitioner. William Brantman testified that he paid \$3,000 to Kretske (R. 652). Brantman testified that he did not know petitioner (R. 656). Plainly, the interests of

petitioner dictated a cross-examination by which to emphasize that in this transaction there was no mention or other basis for inference that petitioner was in any way connected with it. Faced with this dilemma resulting from the conflicting interests of his two clients, the attorney Stewart requested and was allowed a postponement of cross-examination (R. 663). After considering the matter for three days, Brantman then being recalled, Stewart declined to cross-examine—apparently having determined to avoid probable prejudice to Kretske (R. 711).⁶ The damaging effect of the failure to cross-examine this witness is sustained by the comment of the court itself before sentence (R. 1061-1062).

When regard is had to the liberal rules of evidence which so largely favor the prosecution in conspiracy cases, the action of the trial court in forcing petitioner to forego the benefit of undivided assistance of counsel unhampered by regard for the interests of other defendants, plainly left him with little or none of the substance of the right to effective assistance of counsel intended to be safeguarded by the Sixth Amendment. As a consequence, the court in this case lost jurisdiction and the judgment of conviction is void. *Powell v. Alabama*, 287 U. S. 45, 59, 67, 68; *Johnson v. Zerbst*, 304 U. S. 458, 467-468. Wherever asserted, the fundamental right to assistance of counsel has been held to include the right to such assistance untrammelled and unimpaired by the representation of conflicting or adverse interests. *People v. Bopp*, 279 Ill. 184, 191-192; *People v. Rose*, 348 Ill. 214, 218; *People v. Rocco*, 209 Cal. 68, 73. Indeed, the necessity for protection of this fundamental right in cases such as this has been recognized by the Solicitor General of the United States. In his motion (p. 6) to dis-

⁶ "A lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose." Canon of Professional Ethics No. 6.

miss in this Court in *Anderson v. Treat*, 172 U. S. 24, he said:

“It is unnecessary for me to emphasize the propriety of Judge Hughes’ action in insisting that Anderson, upon an issue of life or death, should have his own counsel of standing and ability, not embarrassed by employment of any others concerned in the transactions * * *.”

Obviously, petitioner has here been denied a fundamental right.

2. *The jury was packed by the illegal delegation of their duties by the clerk and the jury commissioner, which violated the petitioner’s right to an impartial trial and deprived him of his liberty without due process of law.*—In support of his motion for a new trial (R. 103) Glasser filed an affidavit (R. 101, 1049-1051) stating that all of the names of females placed in the jury box from which the petit jury in this cause was drawn were “presented to the clerk of the court * * * who is one of the jury commissioners, by the Illinois League of Women Voters, which list had previously been prepared by said league of women voters from their membership” (R. 1050). In holding that the trial court did not abuse its discretion in denying petitioner’s motion for new trial (R. 1139) the Circuit Court of Appeals gave its sanction to these proceedings in the trial court which were so arbitrary as to deprive him of liberty without due process and of his right to trial by an impartial jury.

The affidavit clearly shows that approximately one-half the names placed in the jury box (i. e. the names of all females placed therein) were selected not by the clerk or jury commissioner as required by Federal statute, but by a private, unauthorized person. The selection involved a systematic exclusion of all except a restricted class in a single

social-study organization and deprived petitioner of his right to a fair trial.

This fundamental flaw in the manner of selection of the petit jury is shown by the affidavit to have been presented at the earliest moment the facts became known to petitioner (R. 1050-1051) by motions for new trial and in arrest of judgment (R. 1046) Cf. *Albizu v. United States*, 88 F. (2d) 138, 141; *Ogden v. United States*, 112 Fed. 523, 524, 526; *Hyman v. Eames*, 41 Fed. 676, 678; *Wilson v. Clement*, 126 Fed. 808, 810. The affidavit offers to prove the allegations therein contained (R. 1051). Since the allegations were in no way controverted either by counter-affidavits or even by a formal denial of the grounds assigned, they were to be accepted as true for the purpose of the motion. *Neal v. Delaware*, 103 U. S. 370, 395-396; *Ogden v. United States*, *supra*, 526-527; cf. *United States v. Chaires*, 40 Fed. 820, 823.

By statute, the jurors were required to have the same qualifications as jurors of the highest court of the state. Judicial Code, sec. 275, 28 U. S. C. sec. 411 (Appendix, p. 54). At least 300 names are required to be placed in the jury box from which a venire is drawn; and those names are required to be selected by the clerk and a jury commissioner. Judicial Code, sec. 276, 28 U. S. C. sec. 412 (Appendix, p. 54); *United States v. Murphy*, 224 Fed. 554, 562.

The affidavit states that of the 100-person venire 47 were female and 53 were male. This indicates that the clerk conformed to the requirement under Illinois law that the names of males and females be placed in the jury box without regard to sex. Ill. Rev. Stat. (1939), c. 78, sec. 1 (Appendix, p. 54); *People ex rel Denny v. Traeger*, 372 Ill. 11, 18. Since it is shown that the names of all females were presented by the Illinois League of Women Voters, it follows that, as to approximately one-half of the names placed in the jury box, selection was made not by the clerk or the jury commissioner but by a single unauthorized private organization.

The trial court was without power to dispense with the statutory requirement that selection be exclusively by the clerk and the jury commissioner, since it is an essential feature of the system prescribed by law and designed to secure and preserve the right to a fair and impartial trial. The decision of the Circuit Court of Appeals holding that the District Court did not abuse its discretion in denying a new trial conflicts in principle with the decisions in *Dunn v. United States*, 238 Fed. 508, 512 (C. C. A. 5); *United States v. Murphy*, *supra*, 224 Fed. 554, 560, 561, 566 (N. D. N. Y.); *In re Petition for Special Grand Jury*, 50 F. 2d 973 (M. D. Pa.); *Klemmer v. Railroad*, 163 Pa. 521, 530; *State v. Newhouse*, 29 La. Ann. 824, 825; *State v. Jenkins*, 32 Kan. 477, 479. Where the jury has been selected by persons having no authority whatever to select them, the whole proceeding to form the panel is void and the objection may be taken at any time. See *United States v. Gale*, 109 U. S. 65, 69; *Rodriguez v. United States*, 198 U. S. 156, 164. The error here is not a mere irregularity as to manner of selection; cf. *Agnew v. United States*, 165 U. S. 36, 42-45; *United States v. Brookman*, 1 F. (2d) 528, 536-538 (D. Minn.), *aff'd* 8 F. (2d) 803 (C. C. A. 8); *Wilson v. United States*, 104 F. (2d) 81, 82 (C. C. A. 5); neither does it involve a mere solicitation by the clerk of information from varied sources preliminary to selection by the clerk; cf. *Walker v. United States*, 93 F. (2d) 383, *cert. denied* 303 U. S. 644.

Even were the delegation of authority by the clerk to be deemed but a defect or imperfection in matter of form within the meaning of R. S., sec. 1025, 18 U. S. C. sec. 556, cf. *Williams v. United States*, 275 Fed. 129, 132 (C. C. A. 9), the affidavit in support of petitioner's motion obviates operation of that section. For it not only concludes that there was resultant prejudice but affirmatively states the facts showing bias, i. e., that all the women whose

names were presented "had attended jury classes whose lecturers presented the views of the prosecution" (R. 1050-1051). Indeed, it would seem that prejudice is necessarily implied by the showing that the jury was packed in that approximately half of the jury list names were selected, not by the clerk or jury commissioners, but by a private organization. "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community." *Smith v. Texas* (U. S. Sup. Ct., Nov. 25, 1940), 85 L. ed. 106, 108.

It seems equally plain that the action of the clerk in effectuating a systematic exclusion from the jury list of all females save members of the jury classes of the Illinois League of Women Voters constituted an administration of the law so arbitrary as to violate the petitioner's right to due process under the Fifth Amendment. The opinion of the Circuit Court of Appeals after stating that the contentions here made were considered and overruled by the trial court held: "Under such circumstances we cannot say that the District Court had abused the discretion vested in it by law" (R. 1139). In so holding, the court plainly refused to exercise its function as a reviewing court, for it was required to consider the facts and the applicable statute. This court has set up, and we submit that the court below in reviewing the question of abuse of discretion was required to apply a definite test: Whether the denial of a new trial was in the exercise of a sound discretion "exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result". *Langnes v. Green*, 282 U. S. 531, 541; *Burns v. United States*, 287 U. S. 216, 222-223.

3. *The record fails to disclose that there was an indictment returned against this petitioner by any grand jury*

in open court or otherwise.—The petitioner, with the other defendants, by a motion to quash, supported by affidavit, raised the point that the alleged indictment had not been properly returned in open court and was filed without the proper order of the court directing that it be received and filed (R. 142, 149). The motion of the prosecutor to strike was sustained (R. 150, 42).

On appeal, the Circuit Court of Appeals acknowledged that (R. 1119):

“ * * * it must be made to appear from the record that the grand jury appeared in open court and returned into court the indictment to which the defendant is required to plead.”

This rule is well recognized. *Ledbetter v. United States*, 108 Fed. 52, 55 (C. C. A. 5); *Renigar v. United States*, 172 Fed. 646 (C. C. A. 4) and authorities cited; *Angle v. United States*, 172 Fed. 658; *Rainey v. The People*, 8 Ill. (3 Gil.) 71, 72; *Yundt v. The People*, 65 Ill. 372, 373. The rule is an obvious essential to the underlying purpose of the constitutional requirement of indictment by a grand jury—protection of the citizen against unfounded accusation whether it come from government or be prompted by partisan passion or private enmity. *Ex parte Bain*, 121 U. S. 1, 11; Charge to Grand Jury, Fed. Cas. No. 18,255 at p. 993. The Circuit Court of Appeals held, however, that the record satisfied this requirement.

The only record upon which the court could have relied was a surreptitious, anonymous, and unauthorized entry which may not properly be deemed part of the record. No question is raised as to the validity of the endorsement by the clerk: “Filed in open court this 29th day of September, A. D. 1939, Hoyt King, Clerk” or as to the preceding notation “A true bill,” “George A. Hancock, Fore-

man" (R. 38). These, however, are manifestly insufficient to satisfy the requirement that the record show a "return" of the indictment by the grand jury. *Ledbetter v. United States*, 108 Fed. 52, 55; *Renigar v. United States*, 172 Fed. 646; *Shinn v. State*, 93 Ark. 290, 293.

The only indication of a "return" is the entry on the motion slip in the term subsequent to its signing by the court (R. 39). Petitioner, by an examination of the record, ascertained that there was no showing whatsoever of a return of an indictment by a grand jury. At the time of his examination the motion slip initialed by the court, "JHW" (James H. Wilkerson), contained a single entry: "Order discharging Grand Jury of Sept. Term 1939." Petitioner's motion to quash was filed October 31, 1939 (R. 40); but, under Rule 6 of the district court, the motion was required to be served on the United States Attorney not later than 4:00 P. M. of the prior day, October 30. At the argument on the motion on November 7, 1939, the motion slip above referred to was found to bear the added entry: "The Grand Jury return 4 Indictments in open Court. Added 10/30/39" (Emphasis ours) (R. 39).

This entry was made by some unknown person without notice to defendants or order of court. Aside from the fact that this entry identifies none of the indictments returned, it is notable that by a strange coincidence the date of this entry is the last day on which the notice of motion and motion could be served on the United States Attorney.

This entry was not made during the term of court at which the clerk's endorsement purports to show that an indictment was filed, Sept. 29, 1939. A new term of court had commenced on October 2, 1939, the first Monday of the month. Judicial Code, sec. 79, 28 U. S. C. sec. 152. The ap-

plicable rule is stated in *Ledbetter v. United States*, 108 Fed. 52, 55:

It seems to be well settled that the record must show that the indictment was returned into court by the grand jury either by a minute entry to that effect or by indorsement of the fact upon the indictment itself, and that an omission will be fatal. See authorities cited in volume 10, Am. & Eng. Enc. Law, pp. 410, 411. It may be noticed that a defective record may be cured by proper entry ordered by the court during the term, or, if not called to the attention of the court during the term, then by proper order entered *nunc pro tunc* at a subsequent term. The minute entry with regard to the return of the indictment (claimed to apply) in this case is as follows: "November 21, 1899. The grand jury came into court, and returned 52 bills of indictment, each of which was indorsed 'A true bill,' and signed by Jas. W. Powell as foreman." The file mark of the clerk on the indictment was as follows: "Filed in open court this 21st day of November, 1899. J. W. Dimmick, Clerk." Neither this minute entry, nor the file mark, nor the two together, was sufficient to identify the indictment as properly returned into the district court by the grand jury, and this seems to be a plain error on the face of the record • • •

The fatal defect here is that at the new term no order *nunc pro tunc* was entered by the court. Without such an order the addition, whether by the clerk or any other person, was entirely lacking in significance. The requirement, as stated in 1 Bishop, Criminal Proceedings, sec. 1160, is approved by this Court in *Wight*, Petitioner, 134 U. S. 136, 143-144:

When the term of the court has closed, it is too late to undo, at a subsequent term, what was done at a former term. A judgment of the court, for instance, cannot then be opened, and modified or set aside. Neither, it has been held, can the clerk, at a subsequent

term, make an entry of what truly transpired at the preceding term. But this refers to the power of the *clerk*, proceeding of his own motion. The *court* may order *nunc pro tunc* entries, as they are called, made to supply some omission in the entry of what was done at the preceding term; yet this is a power the extent of which is limited, and not easily defined • • •

It is unnecessary here to determine whether an order *nunc pro tunc* for the entry in question could be entered. It is enough that an order is required. For, clearly, none was entered by the court in the instant case.

The very abuse here mentioned was checked by the declaration of the King in Britton, Ancient Pleas of the Crown (circa 13 Edw. I) quoted in the *Wight* case, *supra*. As paraphrased in 3 Bl. Comm., p. 409, the declaration in effect provided:

that a record surreptitiously or erroneously made up, to stifle or pervert the truth, should not be a sanction for error; and that a record, originally made up according to the truth of the case, should not afterwards by any private rasure or amendment be altered to any sinister purpose.

Since there is no valid entry made at the term of the September grand jury to show that an indictment of the defendants was then returned, it is submitted that this error is fatal to the proceeding and requires reversal of the judgment.

4. *Improper conduct of the prosecuting attorney clearly violated the right of petitioner to a fair and impartial trial.* That the prosecutor in any case has much to do with the manner and conduct of the trial, and that he can influence the atmosphere of a trial, is clear. That there is burden upon the district attorney as a quasi-judicial officer to aid and maintain the proper judicial atmosphere, and in

doing so to prosecute the defendant solely on the facts of the case by legitimate methods, is well recognized.

Improper questions, statements not based upon evidence, and browbeating of witnesses, is forbidden. All these are prohibited because they tend to distract the minds of the jurors from the actual facts and real issues and create against the defendant a prejudice born of the fact that the district attorney is recognized as a public officer, who has apparently no personal interest in the case, and who is at heart an altruist and interested solely in obtaining justice.

A few of the multitude of instances of misconduct by the prosecuting attorney which destroyed all semblance of a fair trial in this case may be briefly set forth:

(1) During the cross-examination of the petitioner he was questioned as to a few of the thousands of cases handled by him. The files relating thereto had already been put in evidence by the government. Without authorization by the court, these exhibits were kept in the possession of the prosecutor who, although ordered to show them to petitioner during a weekend recess, refused to do so on the ground that petitioner was not accompanied by his attorney (R. 980, 982-983).

In the first place the ordinary safeguarding of the interests of parties litigant requires that exhibits once submitted in evidence be retained in the possession of the clerk of the court.⁷ In any event it is clear that a defendant has an unqualified right to examine such exhibits. Here the denial of such right to petitioner forced him to state in truth, but with naturally prejudicial effect on the jury, that he did not remember the various cases referred to

⁷ Rule 16 of the District Court for the Northern District of Illinois provides: "After being marked for identification, models, diagrams, exhibits and material forming part of the evidence in any cause pending or tried in this court, shall be placed in the custody of the clerk unless otherwise ordered by the court."

by the prosecuting attorney. The violation of the rule of court also culminated here in the very loss against which it sought to guard. The exhibits were taken by the Government from the courtroom on the day the verdict was returned and retained for five or six months until demanded by the clerk of the Circuit Court of Appeals (R. 1094, 1096). Although the Government stated that all the exhibits admitted in evidence at the trial had been transmitted to the clerk of the Circuit Court of Appeals (R. 1096), petitioner showed, and the Government finally admitted, that certain exhibits (Nos. 198, 205, 206 and 208) were missing (R. 1098, 1100).

Two of these missing exhibits, Nos. 205 and 206, were vital to petitioner's cause in the Circuit Court of Appeals and are just as vital in this Court. They were periodic reports of petitioner to his superiors, made contemporaneously with the disposition of the cases complained of by the prosecution and showing in each case the reason for and manner of their disposition (R. 952). The Circuit Court of Appeals had no opportunity to read these exhibits before entering its findings in this case.

(2) In support of its contention that petitioner had corruptly caused the grand jury to no-bill a case against co-defendant Kaplan, the Government attempted to show that the principal witness, one Cole, was not properly examined as to his knowledge. After testimony that this witness had testified on more than one occasion before the May 1938 grand jury, the prosecutor asked and secured "leave at this time to read his [Cole's] testimony before the May, 1938, grand jury." Exhibit 96 was then read to the jury (R. 574). Examination thereof will disclose that it contains the testimony of a number of witnesses before the grand jury but refers only to that part of Cole's testimony relating to his illness (offered as an excuse for perjury) and omits entirely any of his testimony as to the

merits of the case under investigation by the grand jury. That he did testify as to such merits and that the prosecuting attorney wilfully suppressed the transcript of such testimony adequately appears from the statement of the grand jury foreman that Cole was examined concerning his knowledge of "that still" (R. 607) and as well from the testimony of Cole himself (R. 576):

I came down here before the grand jury and I was asked questions which brought up about Kaplan and different things, and I told them all I know about it.

It requires no argument to sustain the view that the jury, having Exhibit 96 in its possession, must have concluded therefrom, in disregard of the easily forgotten oral testimony, that petitioner made no attempt to obtain incriminating evidence from Cole.

(3) Prosecutor Ward was forced frequently to resort to the most obvious sort of leading questions to put into the mouth of witnesses testimony which would in some way involve a mention of petitioner's name. He persisted in assuming that witnesses had said things not said, and persistently examining them upon those assumptions. An example occurs in the direct examination of one Swanson, then subject to an alcohol violation indictment in Cleveland as well as another in Chicago.⁸ Unsuccessful in his attempt to have the witness mention petitioner's name either directly or indirectly in relation to conversations had with third persons, the prosecutor asked the following suggestive and incriminating questions to which he received the following answers (R. 230):

Q. And Dan was to get part of the money that was given him?

⁸ Note the admission of this witness "I would rather commit a little perjury than go to the penitentiary" (R. 235).

A. Well, I don't know if he said Dan or Red, or something like that, either one.

Q. Either what?

A. Either one, Red or Dan.

Q. Didn't you know at that time who Kretske was referring to as Red?

A. Yes.

Q. Who?

A. Well, it was Glasser.

Note that the witness really says only that references to "Red" meant "Glasser" and not that "it was Glasser" who "was to get part of the money"—yet the jury would not be able to untangle this verbiage.

The recurring and persistent practice on the part of the prosecuting attorney in causing witnesses by leading and suggestive questions to give testimony of the type deemed favorable to the Government's cause is well exemplified at pages 229, 244-245, 289, 296, 301, 303-306, 380, 573, 612-613, 636, 659-660, 703 of the record.

These numerous conversations between witnesses and third parties, none in the presence of Glasser, by their very number must necessarily have weighed heavily with the jury. As said by this Court in *Berger v. United States*, 295 U. S. 78, 88:

But, while he [the prosecuting attorney] may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

An example of the obvious attempts to discredit petitioner and mislead the jury as to the significance of plainly immaterial matters appears from the lengthy and searching cross-examination of petitioner by both the prosecutor and the judge with reference to an inaccurate statement as to a college degree in a so-called personnel questionnaire

signed by petitioner but filled out by his secretary one month before his resignation from the office of the United States Attorney (R. 989-991, 954).

(4) The callous disregard of the fundamental rights of an accused person, which characterizes the conduct of this case throughout on the part of the Government, is reflected in the surreptitious manner in which the Government submitted to the jury Exhibit 92. This was a pre-trial statement of Government witness Raubunas dated October 20, 1939, calculated to corroborate his testimony at the trial, and was highly prejudicial to petitioner in that it was one of the few items tending in any way to connect petitioner with the other defendants. The court sustained objection to its introduction (R. 712). It later developed, however, and clearly appears that this exhibit was included in a group of 33 exhibits submitted by the Government at the close of defendant's case and taken to the jury room (R. 1034). When the petitioner uncovered the fact that the prosecutor had surreptitiously so introduced the excluded statement of Raubunas as Exhibit 92, the prosecutor, in an attempt to deny responsibility for his act, stated in the Circuit Court of Appeals that Exhibit 92 was not formally received in evidence because of the objection raised by counsel for petitioner (R. 1100). The Circuit Court of Appeals dismisses this incident upon the mere statement that "mention was made" of Exhibit 92 (R. 1132).

We do not take space to set forth many further and similar abuses by the prosecutor of his official position and trust which appear in the record.

5. *The action of the judge effectually deprived petitioner of the presumption of innocence and denied him a fair and impartial trial.*—The most casual examination of this record will show many instances in which the trial judge undertook the function both of a witness and a prosecutor.

In the guise of an impartial arbiter and with all the weight attaching to his position in the eyes of the jury he was guilty of many actions prejudicial to the petitioner. Space permits but a few examples.

The judge clearly implied to the jury that he had personal knowledge of facts which he thought were relevant and material to the issues then being tried. During the examination of petitioner, without any previous reference having been made thereto, the judge asked (R. 941):

“Did you know at that time that Nick Abosketas was under indictment in the eastern and western districts of Wisconsin?”

Later, without relevance to the matter as to which the witness was then being examined, the judge stated (R. 943):

“I think my impression was there were two indictments pending in Wisconsin against Nick Abosketas on February 25th, 1938.”

Later, again without relevance to the matter then being discussed, the judge stated (R. 1030):

“At my request, the Government has furnished me with this. Let the record show that Nick Abosketas was indicted in the Western District of Wisconsin on January 27, 1936; and that he was indicted in the Western District of Wisconsin, July 20, 1938.

When asked the judge stated (R. 1030):

“To the indictment in the Western District he pled guilty and was sentenced * * * After that, the indictment in the Eastern District was dismissed. It covers the same subject matter, I know that for a fact.”

The last statement that was made before the defendants rested was made by the judge as follows (R. 1030):

“I happen to know something about Nick Abosketas.”

It is respectfully submitted that the above falls clearly within the rule laid down by this court in *Quercia v. United States*, 289 U. S. 466, 470:

This privilege of the judge to comment on the facts has its inherent limitations. * * * In commenting upon testimony he may not assume the role of a witness.

The same principle inheres in the rule as stated in *Terrell v. United States*, 6 F. (2d) 498, 499 (C. C. A. 4):

It seems clear beyond argument that it would be fatal to any conviction of crime that it was founded on references by the trial judge to facts within his knowledge. Indeed, a judge presiding at a trial is not a competent witness, for the duties of a judge and a witness are incompatible. * * * The danger to the dignity of the bench, of subjecting its impartiality to doubt and of placing the defendant at an unfair disadvantage by admitting the presiding judge as a witness is very obvious.

Usurpation of the functions of an advocate appears from the reiteration by the judge of the testimony of the chief clerk of the office of the United States Attorney that of 20 cases presented to the April, 1937 grand jury twelve no-bills were returned (R. 196):

The Court: That is the total number of cases presented?

A. By Mr. Glasser.

The Court: To this Grand Jury.

A. Yes, sir.

The Court: And of the twenty there were twelve No Bills?

It is, of course, impossible to reproduce on the printed page the air of disapproval with which this rhetorical question was asked. Yet the court refused to allow in evidence the report of this Grand Jury which clearly explains that these no-bills were attributable to failures of the Alcohol Tax Unit (R. 789-795).

In examining another witness, despite the showing in the record that the indictment against the witness was still pending (R. 236, 238, 317; 918-921, 837)—that the case had been merely struck from the docket with leave to reinstate—the court attempted to synthesize the Government's theory by asking the question (R. 346):

“You were never convicted, never paid a fine and never went to jail?”

In examining another witness accused in the same pending indictment, the court asked (R. 232):

“The case just dropped out of mid-air?”

Since the case was still pending, the indicated answer was given to each question; the prejudicial effect on the jury is plain. Again, in direct conflict with this same record showing, the court stated in a later question that this indictment had been discharged (R. 348).

Gross abuse of his position by the judge appears in the course of examination of petitioner's witness, Judge Igoe. Earlier, an imputation of breach of duty had been attempted by testimony of Alcohol Tax Unit Agent Bailey that petitioner had failed to prosecute on a conspiracy count a large number of defendants named in the agent's report and had prosecuted only four on substantive counts (R. 708-709). To refute any inference of corruption, petitioner sought to show by Judge Igoe (who had at the time been his superior) that his action had been duly approved after review of the agent's report (R. 891, 902). The objectionable conduct of the court appears from the following (R. 901-902):

Mr. Stewart: Yes. Isn't it a fact, Judge, that you studied that long report, calling your attention to this particular report here (indicating).

The Court: He had undoubtedly hundreds of reports to look at.

Mr. Stewart: Q. The particular report you have in your hand, I will give it the Exhibit number so there

won't be any mistake about it. Number 160, wherein Mr. Bailey, special investigator—

The Witness: A. I assume that report contains a detailed statement of what evidence would be submitted which would involve the Hodorowicz brothers.

Mr. Stewart: That is right. Now I will ask you first, was it not your first instruction to your assistant, Mr. Glasser—

The Court: Just a minute, Mr. Stewart. I am suggesting this, it was my impression the testimony that Mr. Bailey submitted this report to Mr. Glasser after he had completed this investigation which was some time after Mr. Glasser and Mr. Bailey had consulted with Judge Igoe.

Mr. Ward: That is my understanding.

The Court: That is why I thought the Judge ought to have a chance to study this particular report to see when it was submitted.

Mr. Stewart: My understanding of that, your Honor, is, Mr. Bailey came here from Washington.

The Court: Just a minute. Let me ask Mr. Bailey.

Mr. Bailey, you have already testified that you visited Judge Igoe who was then District Attorney with Mr. Glasser, with reference to the Hodorowicz brothers?

Mr. Bailey: Yes, sir.

The Court: At that time did you have this report that we have marked Exhibit 160? Did you have this report marked Exhibit 160 with you and did you submit it to Judge Igoe?

Mr. Bailey: I did not, sir.

The Court: That is my impression, there is some other report and Judge Igoe must have seen, I don't think it is fair to the Judge to confine him to this particular question of this Exhibit until he has a chance to examine it because my impression was Mr. Bailey had not completed his investigation at the time they called upon Judge Igoe and Judge Igoe said "Go out and complete your investigation", and then "Mr. Glasser, I want to hear further from you, and submit this to the Jury."

Mr. Stewart: That is not my memory of the testimony.

The Court: What is your recollection? Just a minute.

Mr. Bailey: Your Honor, I talked to him but on one occasion in my life, and that was on the 26th of January, 1938; at that time that report was not completed. I had no report with me on that occasion.

The Court: That is Exhibit 160.

Mr. Bailey: That is correct. I turned that report over in Mr. Glasser's office on April 21, 1938.

The Court: That is what I thought; that is what made me confused as to the report.

The judge thus interrupted the examination to refute the testimony of the witness, Judge Igoe, by what purported to be a reiteration of the earlier testimony adduced from Agent Bailey (R. 708). The crucial point here, of course, was whether Judge Igoe had seen the report before directing petitioner to present the violations as substantive crimes. Yet, under the guise of solicitude for Judge Igoe the court obfuscated the real issue, confirmed for the jury the credibility of the Government's witness, twice reiterated his impression of the earlier testimony as proving that Judge Igoe had never seen this report, indicated that Judge Igoe was mistaken in his testimony and effectually deprived petitioner of its benefit. In accomplishing this result he also interrupted the witness to examine agent Bailey who was seated at the prosecutor's table. It helped Glasser very little that his witness finally managed to testify that he had seen the report and had directed petitioner's actions (R. 903).

In the course of examination of another witness, the court plainly misled the jury to the great prejudice of petitioner. There is, of course, no presentation of evidence upon a mere arraignment. Yet the trial court,—despite the plain state of the record, showing the proceeding in issue was

an arraignment only for the purpose of taking pleas after indictment (R. 232)—persisted in treating an arraignment as though it should have been a trial (R. 347-348):

The Court: Were the facts brought out before the Judge in your presence, so that the Judge knew the facts?

A. No.

.

Q. Was there a full disclosure of facts made before Judge Woodward, as to your connection in that case?

A. No, not that I heard of. I was sitting at the bench.

Q. Were you called before the Judge at any time?

A. Just to mention our names, to be present.

Q. The Judge did not ask you any questions?

A. No.

Q. The lawyer didn't ask you any questions in front of the Judge?

A. No.

Q. Did Mr. Glasser ask you anything in front of the Judge?

A. No.

Q. So you don't know,—your recollection is that there was not a complete disclosure of all the facts that connect you with that case, before the Judge?

Had the court instructed the jury that failure to disclose all facts on an arraignment was breach of duty on the part of petitioner, it could be made the basis of an assignment of error. But what protection has he against innuendoes such as these?

The rulings of the judge on admissibility of evidence appear also to be arbitrary and the result of bias. To refute the contention that he had failed to prosecute cases on which reports had been made by agents, petitioner offered the report of the April 1937 Grand Jury which stated that the agents in many instances were negligent or ignorant in obtaining evidence by illegal searches and

seizures and cited a specific instance of such negligence causing the voting of a no-bill. This report further praised petitioner's work and expressed confidence in his ability, if unhampered, to clean up the real heads of the alcohol ring (R. 789-795). Yet the court denied this offer of proof of a record of the court (R. 795). On the other hand, to show failure by petitioner properly to prosecute, the Government resorted to, and the judge permitted over objection, introduction of two reports by Alcohol Tax Unit agents showing the facts ascertained by them with regard to two distilleries in which Kaplan, a co-defendant, was implicated (Exhibits Nos. 81A and 113) (R. 529, 532). The jury, of course, assumed that these contained competent evidence which petitioner could use in obtaining an indictment and in prosecution, whereas they could not be used at all before the grand jury. Furthermore, the witnesses named might not testify as the investigators expected, and they might be unreliable or unavailable at the time of the grand jury investigation. These exhibits were plainly incompetent for their obvious purpose—to show that petitioner had ample evidence to obtain indictments and conviction but failed to use it. The only excuse offered for their introduction was that they put Glasser on notice as to a violation of law. But notice had already been established by the statement of a Government witness that the cases had been presented to the grand jury (R. 528-529). The opinion of the Circuit Court of Appeals justifies admission of these exhibits on the ground that they "threw light upon the question" (R. 1132).

Space does not permit the discussion of further incidents of this character, with which the record is replete.

6. *The record is utterly devoid of evidence to support the verdict against petitioner.*—All the persons indicted with petitioner denied having ever given or promised Glasser any

bribe or having ever conspired with him either to solicit bribes or for any other purpose (R. 799, 722, 755, 837-838). There was no evidence of any kind, either direct or indirect, that Glasser ever received a bribe and none that he ever solicited any. Indeed the prosecutor stated (R. 154): "There isn't anything in this indictment that says that anybody paid Glasser a bribe." The Government's vague theory was that "There was a conspiracy on foot to solicit certain persons to make promises" (R. 154).

It is clear that this prosecution is based entirely on the testimony secured and prepared by the agents of the Alcohol Tax Unit. Other than that of Alcohol Tax Unit representatives, the evidence of the Government in the main consisted of testimony adduced from twenty-five confessed and convicted bootleggers, all of whom had been prosecuted and in many cases convicted by petitioner. At the time of the trial, all of these witnesses either had cases pending, were serving penitentiary sentences, were on probation, or had motions for probation pending (R. 663, 569, 245, 537, 276, 700, 689, 265, 342, 295, 254, 616, 408, 619, 452, 380, 250, 623, 556, 643, 197, 676, 631).

Three of the federal judges before whom Glasser regularly appeared testified as to the uniformly able manner in which Glasser discharged his duties as prosecutor (R. 720, 738, 904). Judge Igoe, who as United States Attorney was Glasser's superior during the period involved, testified that he was familiar with, and had personally approved of the manner of disposition of, the cases complained of (R. 890-910).

The evidence as reviewed by the court below.—The opinion of the Circuit Court of Appeals details what it describes as "the more important facts and appellant's connection or association with the suits and matters involved in the conspiracy" (R. 1122-1127). The following chart, setting forth the statements of the court below in one column and the

record in a parallel column, will conclusively demonstrate not only the misconceptions of the court below but the complete lack of any semblance of evidence against petitioner Glasser:

Opinion of Court Below

The Facts of Record

The Chrysler Sedan Case

"It was a libel action in which it was charged that the automobile, seized upon the premises of one Leo Vitale at Peru, Illinois, had been used in connection with a liquor tax violation. The cause came up for hearing before a District Judge on December 23, 1938. Appellee was represented by Glasser, and Roth represented Rose Vitale, wife of Leo Vitale. Roth informed the trial court that the automobile belonged to Mrs. Vitale and had not been used in the manufacture of alcohol. Thereupon an investigator of the Alcohol Tax Unit, who had caused the seizure, informed Glasser that Roth was not informing the court of the true facts nor advising the court that Vitale had heretofore been convicted and sentenced to the penitentiary in the Southern District of Illinois for Liquor Tax Violations, and requested that he be permitted to so advise the trial court. Glasser directed the investigator to leave the

This civil case was tried upon the Alcohol Tax Unit report. (R. 717). Judge Barnes, who had tried the case, appeared as a witness for petitioner and stated that he "had no more right to take that car than I had to take yours" (R. 718). Judge Barnes further testified that Glasser and Roth represented their respective clients properly (R. 718). The agent's report (Ex. 36), upon which the case was tried, states the basis of forfeiture as, "In its rear compartment or trunk were marks or rings on the floor where cans of alcohol had been sitting. These marks were very pronounced, and showed plainly where the corner of the cans had been cut into the wood of the trunk separation". Judge Barnes testified further (R. 717), "I remember that case, the claimant was the wife of the bootlegger" — which shows that the statement in the opinion that the court was not told of Vitale's rec-

court room. The trial court ordered the automobile be returned to Rose Vitale (R. 1123).

ord is erroneous; moreover, this was an action in rem in which the criminal record of the husband of the claimant of the property would not be admissible as testimony; and in any event the agent's report (Ex. 36), on which the case was tried and which was read to the judge trying the case (R. 717), included the criminal record of the claimant's husband.

"Shortly after December 23, 1938 this investigator informed Glasser that he had a number of witnesses to whom Vitale had said that he (Vitale) had "got out of this for \$900" and the investigator suggested that Glasser inquire of Vitale as to who received the \$900. Glasser said he would, but he never did". (R. 1123).

The investigator testified that he told Glasser, "Let us bring him in and see who got those nine hundred dollars" (R. 221). By "us" the agents meant the Alcohol Tax Unit. Glasser had no way of bringing Vitale in, since that was a job assigned to the investigator; if Agent Dowd placed any credence in the matter he would, and should, have rendered a written report thereon officially, recommending and authorizing further proceedings. This he did not do.

The Swanson and Del Rocco Matter

"Elmer Swanson and Patsy Del Rocco, in the latter part of 1936, were engaged in the illicit manufacture of alcohol at 116 W. 119th Street, Chicago, Illinois. The still was seized by the Government. Within a

There was no testimony by anyone that Glasser ever even knew that Swanson and Del Rocco were involved in the operation of the still. Neither was there any report by the Alcohol Tax investigators of such a case involv-

short time after the seizure Swanson met the defendant Horton, who informed Swanson that Swanson and Del Rocco were going to be indicted, but that he (Horton) could take care of it for \$500 which would be taken down town and given to the boss. He mentioned "Red" as the boss. It is undisputed that Glasser has red hair and is known as "Red". The \$500 was paid to Horton in currency. Nothing more was heard concerning the seizure of the still after the payment of the \$500 nor were Swanson or Del Rocco indicted." (R. 1123-1124).

ing these parties. This still was not discovered by investigation but as the result of a fire. No arrests were made at the time, and later the Alcohol agents arrested only one Joppek (R. 249). Of course, the prosecutor (Glasser) could normally prosecute no one until a violation was brought to his attention by the Alcohol agents. While Glasser has slightly reddish hair, there is no testimony that Glasser was known as "Red" and Kretske denied that he knew who was meant by "the Red Head" (R. 804).

Still at 6949 Stoney Island Ave., Chicago

"It further appears that on December 31, 1937, Swanson and the Hodorowicz Brothers operated another still at 6949 Stoney Island Avenue, Chicago, Illinois, which also was seized by the Government. Swanson was arrested and arranged for bail through Horton. Roth was retained as an attorney to defend, having been recommended by Kretske, whom Swanson had met at Hodorowicz' hardware store.

"Frank Hodorowicz operated a hardware store at 11823 South Michigan Ave-

Frank Hodorowicz testified about giving money to Kretske to "take care" of the case but made no mention as to who was to get the money from Kretske. The Judge (R. 298) asked:

"Q. Did he tell you how he was going to take care of that?

"A. No."

Anthony Hodorowicz testified to no conversation and said that Kretske was only consulted with a view to getting him to suggest a lawyer "to defend the boys" (R. 345). Clem Dowiat did

nue and it was there, early in 1938, that Kretske, Horton, Hodorowicz and Swanson met. Horton introduced Kretske. There it was that Kretske said he would take care of the case; for \$1200 'it was supposed to be fixed up so nobody goes to jail'. \$500 in currency was paid to Kretske at his office, the balance to be paid later. At that conversation Kretske said 'don't worry about a thing. Everything will be taken care of'. Kretske also said that Glasser was to get part of the money and part was to take care of another lawyer". (R. 1124).

"The case was placed on Judge Woodward's calendar, Glasser representing the Government and Roth the defendants. On April 28, 1938, on Glasser's motion, the indictment was stricken with leave to reinstate. Swanson paid no money to Roth for his services". (R. 1124).

Still in Garage at 118th Place, Chicago

"Prior to September 1, 1937, an illegal still was being operated in a garage at 118th Place, Chicago. On September 1, 1937, investigators of the Alcohol Tax Unit raided the garage and

not testify to any corrupt dealing or conversation (R. 273-274). Elmer Swanson finally testified, changing his mind as to the amount, that the money was paid to Kretske (R. 229) but, as to Kretske's accomplice, he didn't "know if he said Dan or Red or something like that, either one" (R. 230). Christ Del Rocco testified that the money was given to Kretske but said that Kretske's accomplice "was none of our business, that was his" and, when pressed to name Glasser, gave an "inaudible answer" (R. 244-245).

The indictment was not stricken, but was merely taken off the call calendar or docket, at the request of the agent in charge of the Alcohol Tax Unit, to be reinstated on five days' notice (R. 918-921). It has not yet been reinstated.

In this case the Agent who had made the affidavit for the search warrant did not give the correct address of the premises which housed the still, which was a fatal defect (R. 277-279). A

arrested Peter Hodorowicz and Clem Dowiat. After the arrest, Frank Hodorowicz called upon Kretske [former Assistant United States Attorney and co-defendant herein] and inquired whether Kretske could take care of the case and was told that he (Kretske) "would have to look into it". Kretske told Hodorowicz to return in a few days. On September 23, 1937, Hodorowicz again called upon Kretske and was informed that for \$800, to be delivered to Red, the case could be settled. Hodorowicz gave Kretske \$800. After the money was given to Kretske, Kretske informed Hodorowicz that "Everything is taken care of for tomorrow morning". The next morning Peter Hodorowicz and Clem Dowiat were discharged by the United States Commissioner." (R. 1124).

week before the hearing, petition to suppress on that ground was filed by attorney Balaban who had no connection with Kretske (R. 728). The evidence in connection with the petition to suppress was heard on September 23, 1937, and the case was put over for finding by the Commissioner to September 24 (R. 285-286). If Kretske had examined the Commissioner's file—which is a public record—or had been present at the hearing, Kretske would have known that the case would of necessity be dismissed the following morning. There was nothing that Glasser could have done to prevent this result. Investigator Rossner, a Government witness, testified that at the hearing before the Commissioner he gave all the evidence he had in support of the case and did not withhold anything (R. 279).

The Frank Hodorowicz Conversation with Glasser

"It further appears that on June 3, 1938, Clem Dowiat and Frank and Peter Hodorowicz were indicted, charged with unlawful possession of distilled spirits. Roth was retained to represent the defendants, and

Hodorowicz' complaint about a "raw deal" casts no suspicion upon Glasser, as {Hodorowicz meant that he (Hodorowicz) was innocent of the liquor charge and that the agents had lied about him (R. 337); Hodorowicz

while the case was pending in the District Court Frank Hodorowicz and Kretske had a conversation in which Kretske stated that nothing could be done for Hodorowicz because "There is too much heat." Thereafter Frank Hodorowicz called at Glasser's office and complained that he was getting a raw deal to which complaint Glasser replied: "Bailey says he will get my job if I don't put you away", and "all the money in the world * * * can't do you no good this time" (R. 1125).

also complained of his indictment to Investigator Bailey, saying "it was dishonest" and "I told him he ain't fair and all like that" (R. 338). As to Glasser's remark that "Bailey * * * will get my job if I don't put you away", the record is clear that this was spoken in jest, in the public corridor of the courthouse, and in the presence of Bailey and others (R. 710). Hodorowicz and Glasser also had a conversation in the presence of Investigator Burns, in which it is not denied that Glasser admonished Hodorowicz, who had been indicted in 1929 but not tried (Ex. 160), that the latter "this time" was going to the penitentiary (R. 928). The quoted remarks about the money were occasioned by Hodorowicz' statement that he would spend \$10,000 to get out of his trouble, to which it is not denied that Glasser replied, "If you spent ten million dollars, it won't do you any good" (R. 929). The court below has quoted from Hodorowicz' version of this conversation (R. 303-304) wherein Hodorowicz related that he had asked Glasser whether he (Hodorowicz) should retain a well-known

lawyer named Hess—to which, as even Hodorowicz says, Glasser replied, “For all the money in the world he [Hess] can’t do you no good this time” (R. 304). But the court below has quoted only part of this sentence, has eliminated by asterisks the reference of the language to Hess, has thus made it appear that the money was offered to Glasser, and has in one sentence linked the excerpt with another excerpt from the corridor banter with Bailey (R. 710) mentioned above—in order to make it appear that, threatened by Bailey, Glasser refused a bribe. This is a plain, obvious and gross distortion of the record.

“After this conversation Roth’s services were dispensed with and other counsel represented the defendants in that case. They were found guilty and on appeal the judgment was affirmed. *United States v. Hodorowicz, et al.*, 105 F. (2) 220” (R. 1125).

Roth, as a matter of fact, had been “released . . . from the case” *before* this conversation took place (R. 302). It may also be noted that Glasser later successfully prosecuted Hodorowicz and other members of his family (R. 319, 322), and at this trial Hodorowicz flatly denied that he had attempted “any fixing” in his case (R. 330-331).

Western Avenue Still Case

“On September 10, 1935, while one Victor Raubunas

Raubunas testified that on September 10, 1935, he paid

was conducting a tavern in Chicago, the defendant Kaplan came to the tavern and suggested that Raubunas engage in the illegal manufacture of alcohol, assuring Raubunas that the business would be protected "through the Federal Building" but that it would cost \$1,000 to secure the protection. Raubunas gave Kaplan \$1,000 and thereafter Raubunas, Kaplan, Adam Widzes and one Ralph Bogush operated a still at 2524 South Western Avenue. On July 2, 1936 investigators of the Alcohol Tax Unit raided the premises and seized the equipment.

"During 1936 Kaplan and Raubunas had other transactions involving the illegal manufacture of untaxed spirits and Raubunas made several visits to a garage operated by Kaplan at Kedzie and Ogden Avenues. On one of these visits he saw Kaplan enter an automobile with Kretske and Glasser and drive away with them" (R. 1125).

\$1,000 to become a partner in the still and not, as the opinion intimates, to secure "protection" (R. 453). Raubunas was thereafter convicted, on July 19, 1939, and sentenced to three years in the penitentiary on an indictment drawn and presented by Glasser. Still later on July 27, 1939, while in custody, he gave a statement to the Government with reference to certain facts in the present case (Exhibit 84, R. 486),—in which statement he made no mention of the fact that he had ever seen Glasser, Kaplan and Kretske together (when confronted with this fact at the trial herein, he had no answer; R. 490). After giving this statement to the Government in 1939, Raubunas was sent to the penitentiary at Leavenworth and, after being there a while, was brought back to Chicago (R. 491). He testified before the September Grand Jury (Overt Acts No. 44 and 45, R. 21) to the effect that Glasser, Kretske and Kaplan met on two occasions in 1938, once at Kedzie and Ogden Avenues and once at Kedzie and Douglas Avenues. The indictment in this case was filed on September 29, 1939.

Raubunas was kept in Chicago for 44 days after being brought from the penitentiary, and he was questioned repeatedly by the agents (R. 526). On October 20, 1939, he gave his second written statement to the Government (Exhibit 92) in which he stated that he had seen Glasser, Kretske and Kaplan meet on three occasions in 1936 and that all three meetings were held at Douglas and Kedzie Avenues. Kretske denied being in an automobile with Kaplan and Glasser (R. 809) and Kaplan denied that he ever was in an automobile with either Glasser or Kretske (R. 722). Assuming that Raubunas was to be believed, nevertheless guilty knowledge on Glasser's part "could not be inferred . . . from the casual and unexplained meetings of some of the respondents with others who were convicted as conspirators." *United States v. Falcone*, U. S. Sup. Ct., December 9, 1940, 85 L. Ed. 143, 146. *A fortiori*, actual participation cannot be so inferred.

"In July, 1937, the Alcohol Tax Unit brought to Glasser's attention the Western Avenue and Spring Grove still violations and

No testimony of any kind was introduced to connect Glasser with any corrupt dealings in connection with this no-bill. The conclud-

requested prosecution. Written reports containing information implicating Kaplan, Raubunas and others were furnished. Glasser appeared before the Grand Jury. The Grand Jury returned a No Bill against Kaplan, Raubunas, Widzes and Bogush in the Western Avenue still." (R. 1125-1126).

ing paragraph of the investigator's report (Exhibit 81) states that the witnesses were more or less reluctant and had given contradictory statements, and it suggested that the United States Attorney call them to his office for the purpose of trying to get proper testimony from them. The evidence of the Government shows that Glasser took them before the Grand Jury (R. 528). Of course, the return of a no-bill did not preclude the Government from further criminal proceedings. Long after Glasser left office, the Government secured an information against only Kaplan and even that was dismissed on motion of the Government after the trial herein was concluded (R. 1046-1047).

Spring Grove Still Case—

"In October or November of 1936 Raubunas, Kaplan, Edward R. Dewes and several other men operated a still, manufacturing alcohol, at Spring Grove, Illinois, until January 1937, when it too was raided by Government officers. * * *

"It further appeared that the Alcohol Tax Unit commenced its investigation of

The opinion seems to indicate that Glasser did not tell the Grand Jury to indict Kaplan, Raubunas, and Dewes—but the evidence of the Government in this case showed that Glasser presented to the Grand Jury all the witnesses available to him (R. 529) and gave them the names of *all* prospective defendants, including Kaplan,

the Spring Grove still on February 10, 1937, a final report being submitted to the District Attorney in July 1937. Between February and July of 1937 several of the investigators held conferences with Glasser regarding the names of possible witnesses and their testimony. Glasser informed one of the investigators that he had heard that Kaplan was a notorious bootlegger and that there was sufficient evidence to obtain his indictment and conviction.

"On May 15, 1938, after the defendant Horton had informed Edward R. Dewes that Kretske desired to see Dewes, Horton and Dewes called at Kretske's office. There Kretske advised Dewes that the grand jury was in session, and that if Dewes could raise \$100, he (Dewes) would not be indicted for the Spring Grove still. On May 17, 1938, at Kretske's office in the presence of Horton, Dewes gave Kretske \$100. The money, Kretske said, would be sent over to the red-head.

"It further appears that Glasser presented the evidence relative to the Spring Grove still to the grand jury on May 17, 1938 and told the jurors who should be named

Raubunas, and Dewes. Kaplan's name was first on the list (R. 530). The Grand Jury simply did not follow Glasser's recommendations as demonstrated by the testimony by the foreman of the Grand Jury, Gates, that the jurymen exercised their "best judgment as to who to indict and who should be no-billed." (R. 608). Indeed, far from implicating Glasser, Raubunas testified, in connection with this incident, that Alcohol Agent White "looks after everybody" (R. 466).

in the true bill. Notwithstanding there was evidence implicating Kaplan, Dewes and Raubunas, a No Bill was returned against them." (R. 1125-1126).

The Kwiatowski Case.

"On August 25, 1938, one Walter Kwiatowski was arrested while driving an automobile containing untaxpaid alcohol, taken to Glasser's office and charged with unlawful possession of distilled spirits. He was released from custody upon a bail bond furnished by defendant Horton. Prior to the hearing before the United States Commissioner, Horton informed Kwiatowski that "he could fix the case for \$600." Kwiatowski withdrew \$3,750 from his savings account in a Chicago bank and gave Horton \$600. The Commissioner dismissed the complaint. Glasser appeared for the Government.

"On November 10, 1938, the Treasury Department requested Glasser to present the Kwiatowski case to the Grand Jury. Glasser took no action in the matter." (R. 1126-1127).

The statement that Kwiatowski was arrested in a car containing untaxpaid alcohol is incorrect; he was arrested while walking in an alley with the liquor in his pockets (R. 397). Kwiatowski could not read English; a polished statement purporting to be his and containing the statements paraphrased by Agent Bailey was introduced (R. 412-414); he testified that he did not understand many words in the statement (R. 416-417); and, as to Horton's asking or receiving \$600, he testified, "No, I no give him" (R. 415). As to the proceedings before the Commissioner, Investigator Rossner testified for the Government (R. 398) that he made a full disclosure of the facts at the hearing before the Commissioner, after which the Commissioner stated that the agent had no right to arrest Kwiatowski and Kwiatowski was discharged by the Commissioner (R. 397).

Quite contrary to the statement of the court, there is no evidence that Glasser was ever requested by the Alcohol Tax Unit to reopen the Kwiatowski case; there was no proof that the so-called letter and report (R. 585-586) of November 10, 1938, were ever delivered to Glasser; Glasser denied that he ever received this supplemental report or had any recollection of the letter (R. 963); and, if received, the case would not in the ordinary course have been presented to the Grand Jury until after Glasser left office early in the following year (R. 912). Not only does the record fall far short of implicating Glasser; it shows that the trial court refused to permit proof that one of the Alcohol Tax investigators in the case "was discharged . . . for taking bribes" (R. 394-395).

The Abosketes Matter.

"In February, 1938, Investigator Thomas Bailey informed Glasser that one Frank Brown, recently convicted of a liquor violation and confined in the Cook County Jail, desired to impart information relative to others implicated in the vio-

The court connects Glasser with this case only in stating that convict Brown was brought to his office in February of 1938 to give testimony about Abosketes, and that thereafter Brantman began dealing with Abosketes. However, Abos-

lation. Brown, was brought to Glasser's office and there stated that one Nick Abosketes was connected with the illegal operation of the still upon the Murdock Farm, in Illinois. Shortly thereafter one William M. Brantman from Chicago, called Nick Abosketes over the telephone at Milwaukee, Wisconsin. The following day Abosketes came to Brantman's office in Chicago. Brantman told Abosketes that he had connections with the Federal Building and could stop things, and that Brown had given certain information to the Federal people connecting him with the Murdock Farm still. On April 19, 1938, Abosketes paid Brantman \$3,000 in cash, obtaining therefor a receipt in which Brantman stated the money was being paid on account of services. Brantman never rendered any service to Abosketes. Several weeks later Brantman called upon Abosketes at Milwaukee and informed Abosketes that everything was stopped and under control. The record discloses that the \$3,000 was delivered to Kretske" (R. 1127).

ketes began dealing with Brantman not after Brown's interview with Glasser, as the court below states, but *before* (Question at bottom of R. 663; answer, because of printer's error, at top of R. 658); and R. 649). Both Abosketes (R. 668) and Brantman (R. 656) testified that they did not know Glasser. No shred of evidence connects Glasser with any unlawful aspect of this incident.

Nowhere in its opinion does the court below say that Glasser was derelict in his duty as a public prosecutor—its

conclusion is merely that "it was the province of the jury to consider" the foregoing circumstances (R. 1129). The court below points to no other evidence and, under the rule that it states (R. 1130) "no conviction can be had" since "the evidence is as consistent with the innocence of the [petitioner] as with [his] guilt." Yet the court feels "compelled to the conclusion that the verdict is supported by substantial evidence" (R. 1130). It would be difficult to imagine a clearer case of lip service to the rule accompanied by disregard of its import.

Total lack of evidence of knowledge on the part of petitioner of the alleged conspiracy.—A vital flaw in the evidence against petitioner is adequately disclosed by a reference to the only evidence presented by the prosecution to show knowledge of the alleged conspiracy on the part of the petitioner.

We here invoke the rule recently laid down by this court in *United States v. Falcone* (Dec. 9, 1940), 85 L. Ed. 143, that, since the gist of the offense of the conspiracy is agreement among the conspirators to commit an offense attended by an act of one or more of them for its effectuation, the showing of relationship of a defendant to one of the conspirators, even if accompanied with acts on his part which furthered the object of conspiracy, is without probative weight in the absence of a showing of knowledge of the conspiracy on the part of such defendant. This Court there (p. 146) laid it down that guilty knowledge cannot be inferred "from the casual and unexplained meetings of some of respondents with others who were convicted as conspirators."

The basic theory of the prosecution was that proof of the dismissal of charges against a defendant or the voting of a no-bill by the grand jury, even though justified, was sufficient to sustain conviction of petitioner upon testimony of a coincidental payment of money to third persons for the purported purpose of obtaining such a result.

The Government was required to bridge the gap between conversations between other parties indicating payments of money and the only acts shown as to petitioner—his participation as a prosecutor in the proceedings before the United States commissioner and grand jury. The only link offered was the testimony of three persons prosecuted by petitioner—namely, Raubunas, Svec and Frank Hodorowicz. The testimony of these three, taken singly or together, even if its inherently incredible character be disregarded, in no way affords justification for a conclusion that Glasser had any knowledge whatsoever of the existence of the alleged conspiracy.

Raubunas, at the time of the trial under a three year penitentiary sentence now being served in a reformatory (R. 452), had been indicted by petitioner. He testified that on three occasions he had seen one of the other codefendants enter an automobile in which petitioner and Kretske, another co-defendant, were seated (R. 476).

Svec—twice prosecuted by petitioner and, at the time of the trial, serving a penitentiary sentence on the second conviction (R. 556)—testified that on two occasions he had seen petitioner drive past a barber shop at 1062 Polk Street in Chicago, sound his horn, and turn a corner immediately west of the barber shop (R. 563).⁹

The only other item of evidence which has been suggested to show knowledge on the part of the petitioner of any conspiracy is a statement attributed to him by Frank Hodorowicz—a convicted bootlegger convicted by petitioner (R. 322). Hodorowicz testified that Glasser told him, “for all the money in the world he can’t do you no good this time” (R. 304). The most casual examination of the text of the

⁹ Stricken from the record was the further statement of this witness that when the horn was blown, Yarrio, a habitue of the barber shop said, “That is Red, I guess I have to go see him,” and immediately left the barber shop walking in the same direction in which the car had gone (R. 569).

record clearly shows that the word "he" referred not to petitioner Glasser but to Attorney Hess whom Hodorowicz contemplated retaining. The Court below, however, in quoting this statement (R. 1125) omits the word "he" and attributes the reference to Glasser rather than to Hess. This alleged conversation in no way tends to connect Glasser with any of the other alleged parties to the purported conspiracy or to show on his part knowledge thereof.¹⁰

These are the only possible bases for assertion of any knowledge on the part of the petitioner of the existence of the alleged conspiracy. It is submitted that under the principle announced in the *Falcone* case, there is left no possible evidence upon which the jury could properly find him guilty. We challenge the Government to show in what way these items may properly be regarded as connecting petitioner with the conspiracy. Or, failing that, let the Government affirmatively point out any evidence in the record which may be properly regarded as showing connection. If such showing is made or if evidence can be produced to the satisfaction of this Court the petitioner is content to

¹⁰ The utter lack of justification for emphasis on the phrase "this time" is clearly disclosed by the fact that Hodorowicz is shown to have amassed a fortune of \$150,000 in the illicit liquor business, over a period of some fifteen years; he, with his brother, had been indicted in 1929 in the United States District Court for the Northern District of Indiana at Hammond, within five miles of a large hardware store openly operated by him; neither had ever been arrested on that indictment (Ex. 160, R. 324). Glasser, as prosecutor, obtained an indictment in June 1938 and conviction in February 1939 of Hodorowicz and his brothers (R. 322).

The petition of Hodorowicz for probation, sworn to on October 10, 1939 (after this trial and the day after his petition for certiorari was denied, 308 U. S. 584) states that he had, subsequent to conviction, assisted Government agents in other criminal investigations (R. 324). Reference to the original Exhibit No. 52 will show that this petition for probation is written on United States Government bond paper and at the middle of the top of the first page bears as the initials of the dictator "MW" (Martin Ward, the prosecutor in this case). These are concealed under the overlap of a blue backing cover which bears the name of counsel for Hodorowicz.

abandon the point. On the other hand, if such evidence cannot be produced, the law plainly requires that the Government confess error.

7. *A charge of conspiracy to commit a substantive offense, which itself necessarily involves concerted action—that is, a charge of conspiracy to conspire—will not lie; and, as such is the charge, if any is here made, the indictment is fatally defective.* As asserted in the demurrer below (R. 48-50), we believe the indictment to be so vague and indefinite as to fail to inform the defendant of the charge against him, making it insufficient in law. The indictment, however, purports to be for conspiracy. Its charging part (Par. 14, R. 28) is framed in the words of Title 18 U. S. C. sec. 91. That section contemplates the punishment of persons who do, and the indictment charges conspiracy by the defendants to, promise or offer or cause to be promised or offered money or other things of value to an officer of the United States with intent to induce such officer to do or to omit from doing certain acts in violation of his lawful duty. This appears not only from the indictment itself but from the corroborating statement by the prosecutor who drafted it and said (R. 154) :

This indictment follows very closely the language of Section 91.

The indictment must, therefore, be given a like construction. *Thornhill v. Alabama*, 310 U. S. 96.

Since the indictment charges the offense in the words of the substantive statute which itself involves concerted action by two or more parties, it is bad in that it in effect charges a conspiracy to conspire which cannot rightly be made the subject of a conspiracy charged under 18 U. S. C. sec. 88. This rule was recognized in *United States v. Manton*, 107 F. (2d) 834, cert. denied 309 U. S. 664, but it

was pointed out (p. 839) that there the indictment did not "charge a conspiracy to give or accept bribes".

Here, however, the indictment does charge a conspiracy to defraud by the promising, offering, causing and procuring to be promised and offered, of money and other things of value to an officer of the United States with intent to influence such officer to commit and collude in committing certain frauds on the United States (R. 28).

So far as petitioner is concerned, it is plain that, in so far as he might be charged with violation of the substantive statute, concert of action with at least one other party would be essential, since if he, with the necessary intent to influence his own decision and "to collude in committing certain frauds on the United States," were to procure another to promise, offer or give any money to him, it would necessarily contemplate active participation on his part as well as on the part of the other person. Since concert of action and the plurality of agents would have been necessary to commission of the substantive offense which is in the indictment charged to have been the objective of the conspiracy, the indictment is void. *United States v. Dietrich*, 126 Fed. 664, 667; *United States v. Sager*, 49 F. (2d) 725, 727; *Gebardi v. United States*, 287 U. S. 122.

Obviously, the indictment herein clearly flies in the face of established law and is fatally defective. The tenuous and unprecedented form of this indictment was undoubtedly invented because of the inherent weakness of the Government's case. Nevertheless, invention and ingenuity cannot make basic criminal law. The indictment, upon clear precedent, is a nullity.

Conclusion.

Petitioner, a member of the bar of this Court, has been tried before a packed jury, denied the effective service of

counsel of his choice, deprived of a fair trial by the improper and prejudicial conduct of both the prosecutor and the judge, and convicted without evidence upon a fatally defective indictment. Unless the supervisory power of this Court is exercised, a precedent will have been confirmed for lawlessness in the guise of criminal justice.

Moreover, the protection of public officers from persecution is of just as much public importance as the punishment of those who abuse public trust—for otherwise public officers must inevitably be stultified by fear and deterred from effectual service. The public interest is, therefore, doubly involved in this case—that, in a democracy, criminal justice shall be fair, regular, and in accord with the law of the land; and that the officials of the state shall be protected in their persons to the same extent as other citizens.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

February, 1941.

APPENDIX.

U. S. C., Title 18, sec. 88 (Criminal Code, sec. 37):

Conspiring to commit offense against United States. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

U. S. C., Title 18, sec. 91 (Criminal Code, sec. 39):

Bribery of United States officer. Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.

U. S. C., Title 28, sec. 411 (Judicial Code, sec. 275):

Jurors; qualifications and exemptions. Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.

U. S. C., Title 28, sec. 412 (Judicial Code, sec. 276):

Same; manner of drawing. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

Illinois Rev. Stats. (1939), c. 78, sec. 1:

The county board of each county shall at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct in the county, giving the place of residence of each name on the list, to be known as a jury list.

No. 796 30

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

DANIEL D. GLASSER,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

SUGGESTION OF A DIMINUTION OF THE RECORD
AND MOTION FOR A WRIT OF CERTIORARI

✓ HOMER CUMMINGS,

✓ WILLIAM D. DONNELLY,

Counsel for Petitioner.

INDEX.

REPLY BRIEF.

Concordance:

	Peti- tion Page	Gov't Brief Page	Reply Brief Page
1. Petitioner, by action of the trial court and through no fault of his own was deprived of effective assistance of counsel and of due process of law in violation of the Fifth and Sixth Amendments . . .	8	23	5
2. The jury was packed by the illegal delegation of their duties by the Clerk and the Jury Commissioner, who violated the petitioner's right to an impartial trial and deprived him of his liberty without due process of law	12	18	3
3. The record fails to disclose that there was an indictment returned against this petitioner by any grand jury in open court or otherwise	15	10	1
4. Improper conduct of the prosecuting attorney clearly violated the right of petitioner to a fair and impartial trial	19	36	..
Loss of Exhibits 205 and 206	21	38	9
Surreptitious submission of exhibit 92	24	39	10
5. The action of the judge effectually deprived petitioner of the presumption of innocence and denied him a fair and impartial trial	24	31	..
Absence of objections	32	8
Admission of hearsay reports, Exhibits 81A and 113	31	29	6
6. The record is utterly devoid of evidence to support the verdict against petitioner	31	40	14
The evidence as reviewed by the court below	32
Total lack of evidence of knowledge on the part of petitioner of the alleged conspiracy	47	42	14
7. A charge of conspiracy to commit a substantial offense, which itself necessarily involves concerted action—that is, a charge of conspiracy to conspire—will not lie; and, as such is the charge, if any is here made, the indictment is fatally defective	50	25	12
Appendix—Trial court motion slip

.

SUGGESTION OF DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI.

Reasons for motion	22
Certified copy of verdict	23

CITATIONS.

Cases:

	Page
<i>Adler v. United States</i> , 182 Fed. 464	8
<i>Brady v. United States</i> , 39 F. (2d) 312	11
<i>Brown v. United States</i> , 145 Fed. 1	13
<i>Charge to Grand Jury</i> , 30 Fed. Cas. No. 18255	7
<i>Crain v. United States</i> , 162 U. S. 625	3
<i>Dowdy v. United States</i> , 46 F. (2d) 417	11
<i>Ex Parte Bain</i> , 121 U. S. 1	3
<i>Ex Parte Wilson</i> , 114 U. S. 417	3
<i>In re Grand Jury</i> , 62 Fed. 840	7
<i>Johnson v. Zerbst</i> , 304 U. S. 458	3
<i>Leadbetter v. United States</i> , 108 Fed. 52	1
<i>McCandless v. United States</i> , 298 U. S. 342	12
<i>Ogden v. United States</i> , 112 Fed. 523	12
<i>Oliver American T. Co. v. Government of Mexico</i> , 5 F. (2d) 659	4
<i>Patton v. United States</i> , 281 U. S. 276	6
<i>Pointer v. United States</i> , 151 U. S. 596	3
<i>Renigar v. United States</i> , 172 Fed. 646	1, 3
<i>Snyder v. Massachusetts</i> , 291 U. S. 136	6
<i>Tumey v. Ohio</i> , 273 U. S. 510	6
<i>United States v. Dressler</i> , 112 F. (2d) 972	12
<i>United States v. Farrington</i> , 5 Fed. 343	7, 8
<i>United States v. Kilpatrick</i> , 16 Fed. 765	7, 8
<i>United States v. Manton</i> , 107 F. (2d) 834	13
<i>Vicksburg & Meridian Rail'd v. O'Brien</i> , 119 U. S. 99	11
<i>Williams v. United States</i> , 93 F. (2d) 685	8

Statutes and Texts:

R. S., Sec. 1025, 18 U. S. C., Sec. 556	3
18 U. S. C., Sec. 241	13
Title 18, U. S. C., Sec. 91	12, 13
Thompson & Merriam on Juries (1882), Sec. 696, p. 734	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 796

DANIEL D. GLASSER,

v.

Petitioner,

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONER.

The brief for the United States involves propositions of law so novel and misrepresentations of the record so gross as to require reply.

1. *The record fails to show indictment by a grand jury, as required by the Sixth Amendment.*—The Government asserts that the endorsement of the foreman of the September, 1939 Grand Jury and the file mark of the Clerk of the Court sufficiently disclose return by a grand jury of the indictment on which petitioner was sentenced (Gov't Br. 11). So far as the decision below may be regarded as resting on these endorsements, it is clearly in conflict with the decision in *Ledbetter v. United States*, 108 Fed. 52 (C. C. A. 4) and in principal with *Renigar v. United States*, 172 Fed. 646 (C. C. A. 5).

Neither is return of an indictment in this case shown by the entry on the motions slip (R. 39): "The Grand Jury

return 4 Indictments in open Court".¹ Such an entry affords no identification of the persons indicted or of the crimes charged in any of the four indictments referred to. It is not contended that this case involved four indictments or that any of these defendants were accused in more than one indictment. There is no more basis for assuming that the defendants were accused in one of these indictments than that they were accused in all four of them. The syllogism of the Government appears to be (Gov't Br. 13):

The paper called an indictment of Glasser in the instant case was filed September 29, 1939.

The motion slip notation made on October 30, 1939, purports to show that on September 29, 1939 "The Grand Jury returns 4 Indictments in open Court."

"This notation [the Government concludes] explicitly identifies the indictment in the instant case as one of the 4 indictments returned by the grand jury in open court."

This rare bit of logic requires no argument.

Even were this entry otherwise sufficient, it is plain that as pointed out in the Petition, p. 18-19, a formal order was required in order to justify its entry on the motion slip after the term. Plainly prevention of unauthorized alteration requires that the authorizing order also appear of record. And on ordinary principles the prosecution, which relies upon the entry, must show the *nunc pro tunc* order to maintain it. The record here shows no order, formal or informal, by the court; neither is there any entry indicating the existence of such an order by the court.

Petitioner, of course, was not in court on the 29th day of September and so does not know what there took place. Contrary to the Government's statement (Gov't Br. 13, note 4) however, the record does clearly show that peti-

¹ For the full information of the court, a certified photolithograph copy of this motion slip appears in the Appendix, p. 17.

tioner contended below as he does here that the purported indictment was not returned by the grand jury (R. 142, 149).

The repeated assertion of the Government that petitioner has failed to prove that the indictment was not returned (Gov't Br., pp. 11, 13, footnote 4) necessarily involves the novel proposition that the mere production of a paper labeled "indictment" places upon the accused the burden of showing that it was not found or returned by a grand jury. This, and the Government's attempt to imply return, both run afoul of the rule that whatever is essential in a criminal proceeding to deprive a person of his liberty must appear of record. *Pointer v. United States*, 151 U. S. 396, 418-419; *Crain v. United States*, 162 U. S. 625, 645. Since there is no identification of the "indictment" as one returned by a grand jury, the record fails to show "indictment of a grand jury" within the meaning of the Fifth Amendment. *Thompson & Merriam on Juries* (1882) sec. 696, p. 734. The trial court was, therefore, without jurisdiction to try the petitioner for the crime with which he was thus charged and the sentence is necessarily void. *Ex Parte Wilson*, 114 U. S. 417, 429; *Ex Parte Bain*, 121 U. S. 1, 13; *Johnson v. Zerbst*, 304 U. S. 458, 463; *Renigar v. United States*, 172 Fed. 646, 648.

The defect is a matter of substance, and not of form. Indeed, the statute invoked by the Government (R. S., sec. 1025, 18 U. S. C. sec. 556) by its very terms has no application to an indictment in no way shown to have been "found and presented by a grand jury."

There is no blinking the fact that petitioner has been tried and sentenced without any showing of an indictment by a grand jury.

2. *The United States has failed to sustain as a proper exercise of discretion by the trial court the denial of the motion for new trial based on the improper composition of the*

jury list.—Clearly without basis is the Government's assertion that the denial of the motion may possibly be founded on facts possibly disclosed at the hearing on the motion for new trial but not of record (Gov't Br. 20, 21).

The record shows that the motion for new trial was entered March 8, 1940, continued to April 8 (R. 101) and to April 22 (R. 102). On the latter date arguments of counsel were heard and taken under advisement (R. 102, 1046). On April 23, 1940, petitioners filed their affidavits in support of their motions for new trial, including the affidavit of Glasser showing the delegation by the Clerk and jury commissioner of their duty of selection of jurors, so far as it related to females, to the Illinois League of Women Voters (R. 1046, 1049, 1051). "Thereupon . . . the Court overruled and denied the motions of the Defendants for a new trial" (R. 1059).

The certificate of the Court that all evidence is included in the bill of exceptions (R. 1069) confirms the fact that no evidence was introduced at the argument on the motion for new trial. Clearly, neither the Circuit Court of Appeals nor this Court will, in reviewing the question of abuse of discretion consider facts not appearing of record and not even alleged to be true. Cf. *Oliver American T. Co. v. Government of Mexico*, 5 F. (2d) 659, 666.

We do not quarrel with the cases cited by the Government nor the stated rule that "so long as they [the Court Clerk and the Jury Commissioner] do not abrogate [sic] their functions they are permitted . . . to exercise a reasonable degree of selectivity" (Gov. Br. 22). The point is that here the Clerk is shown to have completely abdicated his function in the selection of one-half the jury list, delegating it to the Illinois League of Women Voters. As to those names, no degree of selectivity was exercised. That such a delegation of the duty of selection (even in the absence of an attempt at dictation by the delegator) violates the law is the clear holding of the decisions on closely compar-

able facts cited in the petition (p. 14). The Government does not even discuss or purport to distinguish these conflicting decisions. The Government attaches significance to absence of assertion that women actually served on the jury in this case (Gov't Br. 23). The verdict shows that six of the jurors serving on the petitioner's jury were women (See Suggestion of Diminution of the Record, *infra*, p. 8). Since the jury was drawn from the list illegally compiled (R. 1050), it is plain that petitioner's rights under the statute were seriously impaired.

3. *Vindication of the constitutional right to assistance of counsel free from conflicting obligations to another client permits no inquiry as to the prejudice suffered by the violation of the right.*—The Government does not deny that the constitutional guarantee of the assistance of counsel includes the right to counsel unembarrassed by representation of clients with conflicting interests. Acknowledgment of the existence of the right is also implicit in the holding of the Circuit Court of Appeals that the appointment of Glasser's attorney to act as well for Kretske was not "such an error as to warrant reversal" (R. 1131).

The existence and violation of the right here is clear. Indeed, the Government does not deny the existence of conflicting and adverse interests between the two defendants, Kretske and Glasser, arising by reason of the theory of the prosecution and the nature of the proof. The Government seeks merely to show that no appreciable prejudice resulted.²

² Considerations of length alone dictated omission in the petition of the following instances in which Stewart forebore to object to testimony of witnesses involving references to petitioner not made in his presence and over which he had no control, all of which were extremely prejudicial to him: R. 297, 298, 301, 306, 244-245, 542-543, 631, 703.

It is pertinent here to note that of the numerous citations by the Government to show Stewart's defense of Glasser (Gov't Br., 24, Note 16) only three are references to testimony of witnesses as to conversations with Kretske involving Glasser (R. 246, 250 and 339). More important is the

The Government's contention is entirely irrelevant. For it converts the inquiry from one as to the denial of the right into one merely as to the degree of prejudice suffered as a result of the denial. Thus to pivot correctness of the decision below upon the question of the amount of harm done is to beg the constitutional question. This Court has long recognized that the fundamental rules of fairness guaranteed by the Constitution with regard to procedure in the course of judicial inquiry, including criminal trials, may not be disregarded by reason of the degree of prejudice which may be shown in a particular case, or by reason of the correctness of the result in the individual case. *Tumey v. Ohio*, 273 U. S. 510, 535; *Patton v. United States*, 281 U. S. 276, 292. The same principal is more fully stated by Mr. Justice Roberts in his dissent in *Snyder v. Massachusetts*, 291 U. S. 97, 136-137.³

4. *Hearsay reports made to Glasser by the Alcohol Tax Unit agents were manifestly incompetent.*—In supporting

fact that these merely show cross-examination by Stewart, whereas the basic complaint of petitioner is that Stewart failed to make necessary objections during the direct examination of the Government's witnesses. Pet., p. 10.

The allusion to the fact that Glasser was earlier represented by another attorney, Callaghan, is not pertinent here (Gov't Br. 25). Callaghan was earlier retained (R. 41) and acted as a consultant. Stewart, as is shown by entry of his appearance on January 29, 1940 (R. 95) one week before selection of the jury (R. 97), was retained shortly before, and for the express purpose of conducting, the trial. Reference to the portions of the record cited by the Government merely confirms the fact that Stewart was retained by petitioner to try the case and that Callaghan, participating only as a consultant, was permitted merely to make a number of cursory examinations of character witnesses for defendant (R. 831, 910, 1028) and of one other of defendant's witnesses (R. 823-829). He was retained for, and obviously played, a very subordinate part in the trial defense of petitioner. Contrary to the Government's unsupported statement (Gov't Br., 25), he was not present throughout the trial, absenting himself for days at a time. Manifestly, the defendant is not thus lightly to be deprived of his right of choice of counsel to represent him.

³ While there was disagreement in this case as to the existence of the asserted constitutional right, there was no division as to the principal here invoked.

the action of the trial court in admitting Exhibits 81A and 113 against Glasser (see Pet. 31), the Government betrays a shocking disregard of the fundamental law which protects against unfounded accusation (Gov't Br. 29). It is well established that in the presentation of evidence before a grand jury it is incumbent upon the prosecuting officer to see that only competent evidence is introduced. *United States v. Farrington*, 5 Fed. 343, 347; *United States v. Kilpatrick*, 16 Fed. 765, 771; *In re Grand Jury*, 62 Fed. 840, 846. The rule was stated by Mr. Justice Field in charging a grand jury in California (Charge to Grand Jury, 30 Fed. Case No. 18255 at p. 993).

"In your investigations you will receive only legal evidence, to the exclusion of mere reports, suspicions, and hearsay evidence. Subject to this qualification, you will receive all the evidence presented * * *."

Referring to Exhibits 81A and 113, which were reports as to Kaplan's connection with stills on Western Avenue and in Spring Grove, made to Glasser by Alcohol Tax Unit agents, the Government asserts (Gov't Br. 30):

"Although the reports implicated certain individuals, a 'No Bill' was returned against them. These reports were of course not offered for the purpose of proving the commission of the liquor violations therein described, but to show what Glasser had before him when he acted in these cases."

While thus protesting that these reports were not on the trial of Glasser offered as evidence to prove the fact of liquor law violations by the persons therein accused, the Government in its brief asserts that the same Spring Grove report was competent evidence of such liquor law violations for it says (Gov't Br. 6):

"Available evidence was not used by Glasser upon these presentations (R. * * * 602)"

and (Gov't Br., 9):

"The record discloses many instances of Glasser's failure to utilize available information and evidence in securing indictments * * * (* * * R. * * * 602, 609, * * *).

Plainly then reports were not "available evidence" for grand jury use. Prosecuting officers, in the presentation of evidence to a grand jury sustain an important duty both to the individual and to the public to avoid return of accusations founded upon hearsay evidence which cannot be sustained upon trial. *United States v. Farrington*, 5 Fed. 343, 345. As was said in *United States v. Kilpatrick*, 16 Fed. 765, 771:

"The prosecuting officer is presumed to be familiar with the rules of evidence, and it is his duty to take care that no evidence is received by the grand jury which would not be admissible in a court upon the trial of a cause. 1 Whart. Crim. Law, § 493."

Yet the Department of Justice in its brief joins with the courts below in approving the action of the prosecutor in pillorying petitioner and subjecting him to the infamy of criminal trial for the mere observance and discharge of his plain duty to forbear from presentation of incompetent evidence against accused persons.

5. *Lack of impartiality by the trial court is shown by the record excerpts quoted, whether considered alone or in context.*—Plainly without weight is the ingenuous suggestion that no objection was made to the improper statements and interrogations of the court (Gov't Br. 32). In *Williams v. United States*, 93 F. (2d) 685 (C. C. A. 9)—quoting with approval from *Adler v. United States*, 182 Fed. 464, 472-473—the court said (p. 690-691)

counsel are not held to strict accountability for failure to object or except when the questions are asked

by the court. “* * * Besides, the defendant’s counsel is placed at a disadvantage, as they might hesitate to make objections and reserve exceptions to the judge’s examination, because, if they make objections, unlike the effect of their objections to questions by opposing counsel, it will appear to the jury that there is direct conflict between them and the court.”

6. As to misconduct of the prosecuting attorney, the record clearly charges the prosecutor with responsibility for loss of exhibits and suppression of evidence.—After having retained sole possession of all exhibits for a period of almost five months after the close of the trial, the Government now seeks to avoid responsibility for loss of Exhibits 205 and 206 (See Pet. 20-21) by the naked assertion of the prosecutor that they had never been in his possession (Gov’t Br. 38, note 30).

✶ The record shows, as stated in the petition (p. 21) that the Government had possession of the exhibits in this case from the date the verdict was returned, March 8, 1940, until July 31, 1940. The petition of the defendants for production of missing exhibits (R. 1094-1095) alleged that until the latter date, “no exhibits had been forwarded to the Clerk” of the Circuit Court of Appeals and that on that date the Clerk of the District Court, upon demand of the Clerk of the Circuit Court of Appeals therefor, merely referred him to the Assistant United States Attorney; that on the same date certain exhibits were by the United States Attorney delivered to the Clerk of the District Court and on August 2, 1940 by him certified to the Clerk of the Circuit Court of Appeals (R. 1095).⁴ The answer of the United States At-

⁴ Indeed, the certificate of the Clerk of the District Court embodies a receipt to the United States Attorney and shows that transmission and certification was confined to the exhibits received from the United States Attorney (R. 1075).

torney (R. 1096) admitted all of these allegations and affirmatively stated—

“all of the exhibits in the trial of the case [with an exception not here pertinent] are in the possession of the Clerk of the Circuit Court of Appeals”.

But when further pressed for the production of seven exhibits omitted from the certification by the Clerk, including Exhibits 205 and 206 (R. 1098), the United States Attorney asserted merely that these were defendants' exhibits and had never come into his possession (R. 1100). It is pertinent to note that all of petitioner's other exhibits were received by the United States Attorney at the close of the trial and were subsequently by him delivered to the Clerk of the District Court. See, for example, Glasser's Exhibits No. 197, R. 912; No. 199, R. 913; No. 202, R. 921; No. 203, R. 922; No. 204, R. 948; No. 207, R. 953, all shown by the Clerk's certificate to have been received from the United States Attorney (R. 1075, 1088).

It is submitted that the defendant's statutory right of appeal has little or no substance if the Government may, as here, take from the Clerk all exhibits in a case, lose, suppress or destroy certain of the more important documents and then be exonerated by a mere denial of possession. There is no suggestion that the petitioner ever obtained these exhibits. Responsibility therefore rests either with the Government or with the Clerk. Such slipshod practices in substantial impairment of defendant's rights cannot properly be countenanced by any court of justice.

7. *As to Exhibit No. 92, reversible error is apparent*—As pointed out in the petition (p. 24), objection to introduction of this exhibit was sustained (R. 712). The Circuit Court of Appeals and the Government (Gov't Br. 39-40) assert that Exhibit 92 is shown by the record not to have been ad-

mitted. The opinion of the Circuit Court of Appeals states its reasoning (R. 1132):

“It also appears that on May 17, 1940 the trial court entered an order directing the Clerk of the District Court to certify and send to this court all of the exhibits introduced on behalf of the parties. The Clerk of the District Court, in so certifying, does not certify that Exhibit 92 was sent to the jury. From the record thus appearing we are unable to say that these exhibits were sent to the jury.”

The Government adopts this theory (Gov't Br. 40).

The vitiating flaw in this argument is that, despite the order of the District Court (R. 1092), the Clerk declined to state in his certificate that “*all*” exhibits introduced were certified and transmitted. His certificate states that he transmits only “*certain*” exhibits (R. 1075).

The bill of exceptions showing surreptitious submission of this important exhibit (R. 1034) thus stands uncontradicted and the conclusion of the Circuit Court of Appeals and the Government is utterly unfounded.

The Government does not deny and an inspection of this exhibit will show that this pretrial statement of Raubunas (Ex. No. 92), was corroborative of and consistent with his testimony at the trial (Gov't Br. 40). In square conflict, therefore, with a decision of this Court and as well with holdings in other circuits is the contention of the Government that petitioner was not prejudiced by admission of this exhibit. Admission of a pretrial written statement corroborative of or consistent with testimony of a witness at a trial is uniformly held to be reversible error. *Vicksburg & Meridian Railr'd v. O'Brien*, 119 U. S. 99, 101-103; *Brady v. United States*, 39 F. (2d) 312, 315 (C. C. A. 8); *Dowdy v. United States*, 46 F. (2d) 417, 424 (C. C. A. 4) and authorities cited. As stated in the Petition (p. 24), this pre-

trial statement was highly prejudicial since it was one of the few items tending in any way to connect petitioner with the other defendants. The Government has failed utterly to sustain its burden of proving that the erroneous submission of this exhibit was not prejudicial. *McCandless v. United States*, 298 U. S. 342, 347-348; *Ogden v. United States*, 112 Fed. 523, 527 (C. C. A. 3); *United States v. Dressler*, 112 F. (2d) 972, 978 (C. C. A. 7).

8. *The indictment plainly charges a conspiracy to commit a substantive offense which itself necessarily involves concerted action. It is in no way comparable with the indictment in the Manton case.*—It is frivolous to assert that this indictment does not charge a conspiracy to commit a crime defined by the bribery statute, 18 U. S. C. sec. 91. The Government asserts that the count was laid under that portion of the conspiracy statute which penalizes conspiracies “to defraud the United States”. But to support this contention it quotes only from the first half of the charging paragraph (R. 28). It omits entirely from the charging paragraph the second half beginning with the words “that is to say”. As the most casual comparison will show, this second half charges violation of the substantive offense of bribery of a United States officer almost word for word in the language of Title 18 U. S. C. sec. 91, an offense necessarily involving concert of parties. It is plain that the prosecuting attorney in seeking to obtain the benefit of the liberal rules of evidence incident to a conspiracy charge, was confronted with the difficulty that bribery was in truth the substantive offense asserted to be the object of the conspiracy. Hence, under the cases cited in the petition (p. 51) the conspiracy count would not lie. In an obvious effort to avoid the difficulty, he merely inserted a general characterization of the objective as being the defrauding of the United States. It

is submitted that no approval should be thus afforded to resort to such a flimsy subterfuge. *

Clearly, there is no justification for the omission of the second half of this charging paragraph in the Government's quotation of the charge. The Circuit Court of Appeals, in stating the substance of the indictment includes the second half as an integral part of the charge (R. 1119-1120). It is clear that the phrase "that is to say" is not a videlicet marking the termination of the charging part and all the subsequent matter in this paragraph being part of the same sentence is correctly to be regarded as an essential part of the charge. *Browne v. United States*, 145 Fed. 1, 5 (C. C. A. 2).

The decision in *United States v. Manton*, 107 F. (2d) 834, cert. den. 309 U. S. 664, invoked by the Government (Gov't Br. 26-27), has no relevance here. The indictment there examined is in no way comparable. In brief substance it charged a conspiracy having two objectives: (1) to obstruct and impede the due administration of justice—a substantive offense (18 U. S. C. sec. 241); and (2) to defraud the United States of the conscientious services of Manton. The charging part of the purported indictment here involved charges a conspiracy with but one objective: To defraud the United States of the conscientious services of an Assistant United States Attorney—not named—by offering or promising or causing to be offered or promised, money or other things of value to an officer of the United States with intent to influence his decision (a substantive offense necessarily involving concerted action by a plurality of agents for its commission—18 U. S. C. sec. 91).

Manifestly it is impossible in comparing the two indictments to ignore the second half of the charging part of the indictment here involved as the Government has sought to do in its brief (Gov't Br. 26).

It is important also here to note that the detailing of the means whereby the conspiracy was to be accomplished, contained in paragraph 15 of the indictment (R. 29) and to which the Government refers (Gov't Br. 26),⁵ is entirely separate, and to be distinguished, from the second half of paragraph 14, the charging part of the indictment (R. 28).

9. *The record is utterly devoid of evidence to support the verdict against petitioner.*—In our petition, we have carefully analyzed the evidence cited by the Circuit Court of Appeals (Pet. 33-46). The Government does not even purport to contest or in any way deny any feature of that analysis. However, by resort to sweeping generalities, accompanied by copious record citations, it now seeks to create the impression that the record amply supports the conviction.

We do not seek to cast upon this Court the burden of reviewing the whole record in this case. We do believe that the analysis in the Petition adequately shows that the facts relied upon by the Circuit Court of Appeals were insufficient to sustain the verdict against petitioner.

One salient question of law with regard to the evidence is clearly presented by this record. In the Petition, after appraising the only evidence deemed to afford any possible basis for assertion of knowledge of the alleged conspiracy on the part of the petitioner, the Government was challenged to indicate any other evidence, sufficient in law to show such knowledge (Pet. 47-50).

⁵ Indicative of the universal confusion as to the meaning of this indictment is the Government's reference to paragraph 15 (R. 29) as alleging a "solicitation of money to be paid" whereas the means alleged are that the conspiracy was to be accomplished by the solicitation of promises. Indeed, as pointed out in the petition (p. 6), the prosecuting attorney stated (R. 154) "This indictment follows very closely the language in Section 91, namely, that there was a conspiracy on foot to solicit certain persons to make promises."

The only record references which might possibly be regarded as directed to this challenge are the two following statements (Gov't Br. 6, 9):

"One of Kaplan's men, by following Kaplan and by questioning him, ascertained that Kaplan was periodically contacting Kretske and Glasser (R. 455, 457, 462)."

"There is direct evidence of Glasser's extra-official association and cooperation with Kaplan and with other large-scale violators who, upon payment of money to Kretske, Horton, or to one Miller, were successful in avoiding prosecution (R. 302, 304, 457, 462, 563, 709-711)."

The record references to support the first statement of the Government show nothing more than three unexplained meetings referred to at R. 476 and discussed in the Petition (p. 48).

The first two citations under the Government's second statement, R. 302 and 304, merely show conference by Glasser in his official capacity with an accused bootlegger in Glasser's office. This testimony of the Government witness discloses no extra-official association or cooperation with him on the part of Glasser. The next two citations of the second statement, R. 457 and 462, are identical with those made in support of the first-quoted statement and discussed immediately above. The evidence at R. 563 is referred to in the Petition, p. 48, 3d paragraph, and discussed (Pet. p. 49). It may be noted that this witness is the same Svec who had earlier participated in the attempt to entrap Glasser (Pet. 5-6). The final citation by the Government, R. 709-711, shows merely that immediately after the arraignment of Frank, Peter, and Mike Hodorowicz, Glasser was seen with the same defendants in a public corridor of the Federal Building. It is also to be noted that none of these

record citations in any way show "payment of money to Kretske, Horton or to one Miller."

The Government, in its statement of facts, finds no difficulty in making numerous record citations purporting to support sweeping statements of fact. Yet on this single and distinct proposition the Government has failed utterly to point out any evidence, direct or circumstantial, from which participation by the accused may properly be inferred (See Gov't Br. 42).

Importance of the Case.—Definite conflicts between circuits are presented by the petition. Aside from these questions of law which should be settled by this Court, the case presented is highly important because of the inherent threat to all officers charged with the duty of law enforcement. It is plain that the petitioner—officially vested with a certain degree of discretion necessarily shared with grand juries, courts, and commissioners—has been subjected to accusation and trial for his conduct as an officer without showing of any wrongful action on his part.

Conclusion.

Wherefore, it is respectfully submitted that the petition for certiorari should be granted.

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

March, 1941.

APPENDIX

United States District Court, Northern District of Illinois

Cause No. _____

(Date) *Sep 29 39*

Title of Cause _____

*Of 41
5/1/39*

Brief Statement
of Motion

Name of moving
Counsel

Representing _____

Name of opposing
Counsel (if any)

*Tr. Grand Jury return & added
Indictments on open prob. 10/30/39*

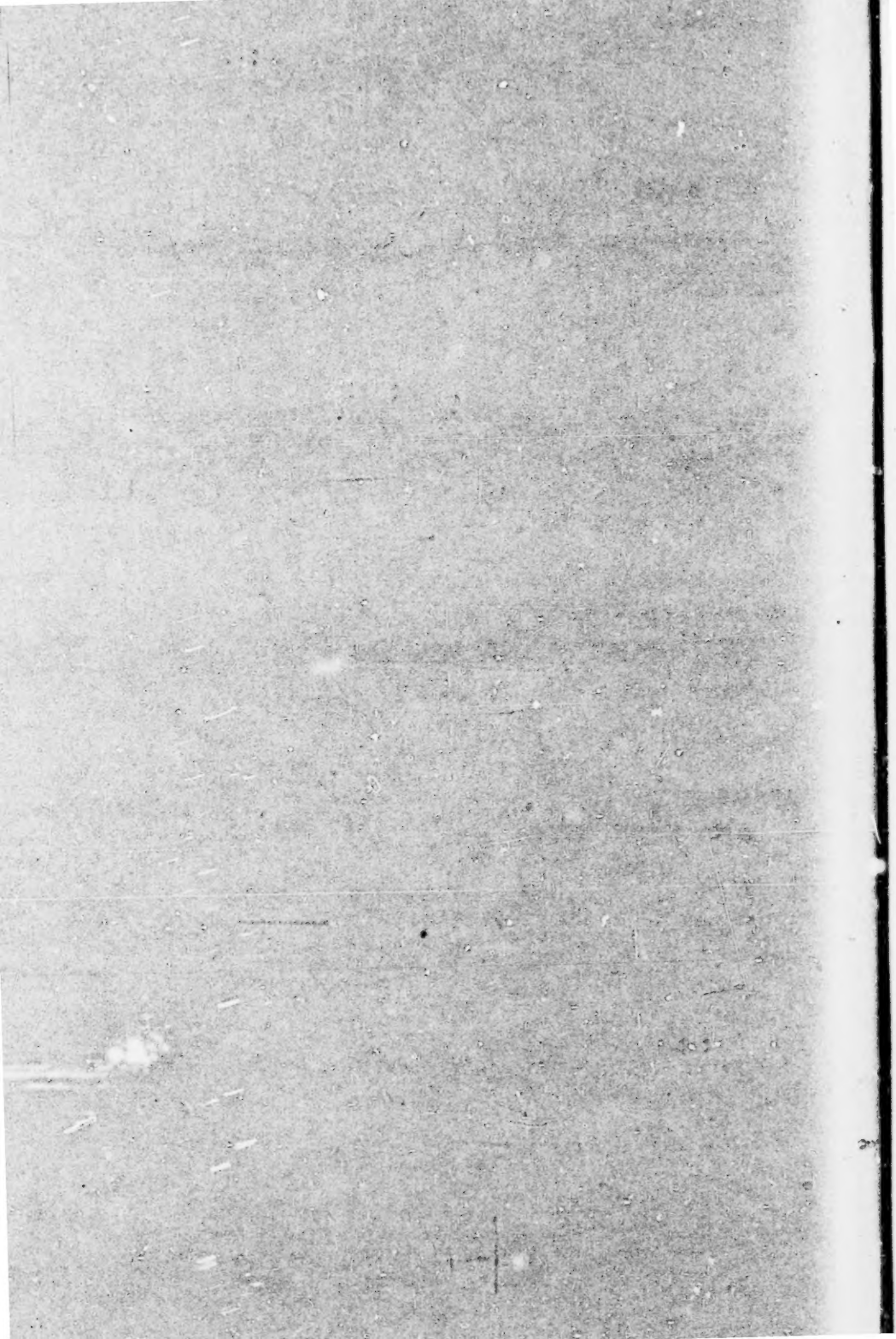
*Order Discharging Grand
Jury of Sept Term 1939*

Attest

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

U.S. DISTRICT COURT - NORTHERN DISTRICT OF ILLINOIS



No. 796

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

DANIEL D. GLASSER,

Petitioner,

v.

UNITED STATES OF AMERICA.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE SEVENTH CIRCUIT**

**SUGGESTION OF A DIMINUTION OF THE RECORD
AND MOTION FOR A WRIT OF CERTIORARI**

HOMER CUMMINGS,

WILLIAM D. DONNELLY,

Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1940

No. 796

DANIEL D. GLASSER,

Petitioner,

v.

UNITED STATES OF AMERICA.

**SUGGESTION OF A DIMINUTION OF THE RECORD
AND MOTION FOR A WRIT OF CERTIORARI.**

MAY IT PLEASE THE COURT:

Your petitioner, Daniel D. Glasser, suggests that there is a diminution of the record in the above-entitled cause and respectfully moves that this Honorable Court issue its writ of certiorari herein directed to the United States District Court for the Northern District of Illinois, Eastern Division, commanding that court to certify and send to this Court certain papers which are of record in that court in this cause. These papers are particularly described as follows:

“Verdict filed March 8, A. D. 1940. In Re: United States vs. Daniel Glasser, et al., D. C. 31825.”

A photo-lithograph copy is attached hereto. (The duly certified copy has been filed with the Clerk of this Court.)

Reason for this Motion.

1. This verdict is a part of the record and is important on the merits of a question raised by the petition for certiorari now pending before this Court.

2. One of the questions raised in this Court on petition for certiorari requires for its proper understanding and decision that the verdict above-referred to be before this Court.

WHEREFORE your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States District Court for the Northern District of Illinois, Eastern Division, commanding that Court to certify and send to this Court the paper above-referred to.

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

I, William D. Donnelly, counsel for the petitioner in the above-entitled cause, do solemnly swear that the facts recited in the foregoing "Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari" are true.

WILLIAM D. DONNELLY.

Subscribed and sworn to before me this 27th day of March, 1941.

[SEAL.]

RUTH M. KELM,
Notary Public, D. C.

My Commission Expires December 2, 1945.

THE UNITED STATES

82

No. 31825

DANIEL D. GLASSER
NORTON I. KRETSKE
ALFRED E. ROTH
ANTHONY HORTON alias TONY HORTON
LOUIS KAPLAN

We, the Jury, find the Defendants, DANIEL D. GLASSER, NORTON I. KRETSKE

ALFRED E. ROTH, ANTHONY HORTON alias TONY HORTON, LOUIS KAPLAN

guilty as charged in the indictment.

Harold Wilson
Leila J. Alexander
Arthur A. Campbell
Virginia R. Haven
Cornelius Jacobus
William J. Jungels
Mildred W. Kelly
Pearl H. Lawson
Bernice G. Lund
Theresa Riew
Margaret W. Riesen
Edward Young

No. 30

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CHARLES ELMORE DRIFLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1941

DANIEL D. GLASSER, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE PETITIONER

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

INDEX.

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	3
Statement	3
Specification of errors	7
Summary of argument	8
Argument	12
I. The record fails to disclose that there was an indictment returned against this petitioner by any grand jury in open court or otherwise	12
1. The record is required to show that the grand jury, and not the foreman alone, returned the indictment into court	12
2. The unauthorized entry is without effect since a nunc pro tunc order was required	15
3. The entries properly made afford no basis for a presumption that return was made by the grand jury	17
II. The jury commissioner and the clerk of the District Court violated the laws of the State of Illinois and of the United States with reference to the selection of the grand jury by arbitrarily excluding the names of women from the box from which the list of grand jurors was drawn	20
III. The trial jury was packed by the illegal delegation of their duties by the clerk and the jury commissioner in violation of the petitioner's right to an impartial trial	23
IV. The alleged indictment is fatally defective in failing to inform petitioner of the charge against him and in charging a conspiracy to commit a substantive offense which itself required concert of action and plurality of agents	27
V. Petitioner, by action of the trial court and through no fault of his own, was deprived of effective assistance of counsel in violation of the Fifth and Sixth Amendments	31
VI. The conduct of the trial court operated to deprive petitioner of a fair trial and of the presumption of innocence	37
1. He erroneously admitted highly prejudicial hearsay evidence	37
2. His hostile cross-examination of petitioner and prejudicial remarks deprived the accused of an impartial trial	42

	Page
3. He made statements as of fact not shown by the evidence	44
4. His repeated acts of advocacy were a clear abuse of his prerogatives as a trial judge	47
VII. The improper conduct of the prosecuting attorney clearly violated the right of petitioner to a fair and impartial trial and impaired his statutory right of appeal	54
1. During the trial the prosecuting attorney wrongfully deprived petitioner of access to exhibits admitted in evidence	55
2. The prosecutor removed from the office of the clerk and lost exhibits deposited with the clerk forming part of the record in this case	55
3. After trial, the prosecutor, McGreal, unlawfully mutilated exhibits constituting a part of the record in this case	57
4. Prosecutor Ward, by his leading questions, assumed the role of a witness	60
5. The prosecuting attorney read to the jury only part of the testimony of a witness before the grand jury, deliberately leaving the jury to infer, contrary to fact, that this was the only testimony given by the witness	63
6. The prosecutor persisted in the putting of specious questions, the plain purpose and effect of which were to impress on the minds of the jury the probability of the existence of the assumed and damaging facts on which the question was based although they were not and could not be proved	66
7. The prosecutor surreptitiously caused to be submitted to the jury pre-trial statements corroborative of the testimony of Government witnesses	69
VIII. The evidence in this case fails utterly to show that Glasser was a party to any combination or agreement between the alleged conspirators or that he was a knowing participant in any common and unlawful design	72
Conclusion	79
Appendix	80

CITATIONS.

Cases :

<i>Adler v. United States</i> , 182 Fed. 464	47
<i>Agnew v. United States</i> , 165 U. S. 36	25
<i>Albizu v. United States</i> , 88 F. (2d) 138	24
<i>Anderson v. United States</i> , 30 F. (2d) 485	30
<i>Anderson v. Treat</i> , 172 U. S. 24	36
<i>Angle v. United States</i> , 172 Fed. 658	13

	Page
<i>Asgill v. United States</i> , 60 F. (2d) 780	29
<i>Berger v. United States</i> , 295 U. S. 78	69
<i>Bilansky v. State</i> , 3 Minn. 427	16
<i>Bodkin v. State</i> , 20 Ind. 281	17
<i>Bowen v. State</i> , 81 Ga. 482, 8 S. E. 736	17
<i>Brady v. United States</i> , 39 F. (2d) 312	72
<i>Brady v. United States</i> , 41 F. (2d) 449, 450	29
<i>Browne v. United States</i> , 145 Fed. 1, 5	30
<i>Burns v. United States</i> , 287 U. S. 216	24
<i>Cachute v. State</i> , 50 Miss. 165	13
<i>Charge to Grand Jury</i> , 30 Fed. Cas. No. 18,255	19, 42
<i>Chicago & N. W. Ry. Co. v. Kelly</i> , 84 F. (2d) 569	44
<i>Commonwealth v. Cawood</i> , 2 Vir. Cas. 527	13
<i>Cornwell v. State</i> , 53 Miss. 385	17
<i>Crain v. United States</i> , 162 U. S. 625	17
<i>Dakins Case</i> , 2 Wm. Saund. 290	30
<i>Donnelly v. United States</i> , 228 U. S. 243	37
<i>Dowdy v. United States</i> , 46 F. (2d) 417	72
<i>Downey v. United States</i> , 67 App. D. C. 192, 91 F. (2d) 223	16
<i>Dunn v. United States</i> , 238 Fed. 508	25
<i>Ex parte Bain</i> , 121 U. S. 1	19
<i>Felker v. State</i> , 54 Ark. 489	16
<i>Gardner v. People</i> , 20 Ill. 430	16, 19
<i>Gebardi v. United States</i> , 287 U. S. 112	31
<i>Green v. State</i> , 19 Ark. 178	13, 14, 16, 19
<i>Hogan v. Hill</i> , 9 Fed. Supp. 333	16
<i>Hopt v. Utah</i> , 110 U. S. 574	37
<i>Hyman v. Eames</i> , 41 Fed. 676	24
<i>In re Grand Jury</i> , 62 Fed. 840	42
<i>In re Petition for Special Grand Jury</i> , 50 F. (2d) 973	25
<i>Johnson v. State</i> , 24 Fla. 162	16
<i>Johnson v. Zerbst</i> , 304 U. S. 458	36
<i>Kassin v. United States</i> , 87 F. (2d) 183	73
<i>Kehoe v. Commissioner of Int. Rev.</i> , 105 F. (2d) 552	44
<i>Klemmer v. Railroad</i> , 163 Pa. 521	25
<i>Kutler v. United States</i> , 79 F. (2d) 440	30
<i>Langer v. United States</i> , 76 F. (2d) 817	73
<i>Langnes v. Green</i> , 282 U. S. 531	24
<i>Larkin v. United States</i> , 107 Fed. 697	29
<i>Laura v. Mississippi</i> , 26 Miss. 174	17
<i>Ledbetter v. United States</i> , 108 Fed. 52	13, 17
<i>Mammoth Oil Co. v. United States</i> , 275 U. S. 13	44
<i>Mayola v. United States</i> , 71 F. (2d) 65	73
<i>Minker v. United States</i> , 85 F. (2d) 425	73
<i>Minner v. United States</i> , 57 F. (2d) 506	73
<i>Morrison v. California</i> , 291 U. S. 82	73
<i>Mose v. United States</i> , 35 Ala. 421	17
<i>Naftzger v. United States</i> , 200 Fed. 494	30
<i>Neel v. Delaware</i> , 103 U. S. 370	25

	Page
<i>New York C. R. Co. v. Johnson</i> , 279 U. S. 310	69
<i>Nibbelink v. United States</i> , 66 F. (2d) 178	73
<i>Ogden v. United States</i> , 112 Fed. 523	24, 25
<i>Outlaw v. United States</i> , 81 F. (2d) 805	30
<i>Patton v. United States</i> , 281 U. S. 276	36
<i>People v. Bopp</i> , 279 Ill. 184	36
<i>People ex rel. Denny v. Traeger</i> , 372 Ill. 11	25
<i>People v. Rocco</i> , 209 Cal. 68	36
<i>People v. Rose</i> , 348 Ill. 214	36
<i>Powell v. Alabama</i> , 287 U. S. 45	36
<i>Quercia v. United States</i> , 289 U. S. 466	46
<i>Rainey v. The People</i> , 8 Ill. (3 Gil.) 71	13, 16
<i>Reavis v. United States</i> , 106 F. (2d) 982	73
<i>Renigár v. United States</i> , 172 Fed. 646	13
<i>Rodríguez v. United States</i> , 198 U. S. 156	26
<i>Shannabarger v. United States</i> , 99 F. (2d) 957	73
<i>Shepard v. United States</i> , 290 U. S. 96	41
<i>Smith v. Texas</i> , 311 U. S. 128	26
<i>Snyder v. Massachusetts</i> , 291 U. S. 97	36
<i>State v. Jenkins</i> , 32 Kan. 477	25
<i>State v. Knowlton</i> , 115 Maine 544	19
<i>State v. Newhouse</i> , 29 La. Ann. 824	25
<i>State v. Sloan</i> , 309 Mo. 498	19
<i>State v. Squire</i> , 10 N. H. 558	13
<i>Terrell v. United States</i> , 6 F. (2d) 498	46
<i>Turney v. Ohio</i> , 273 U. S. 510	36
<i>United States v. Brookman</i> , 1 F. (2d) 528	25
<i>United States v. Chaires</i> , 40 Fed. 820	25
<i>United States v. Cruikshank</i> , 92 U. S. 542	29
<i>United States v. Dietrich</i> , 126 Fed. 664	31
<i>United States v. Falcone</i> , 109 F. (2d) 579	74
<i>United States v. Falcone</i> , 311 U. S. 205	72, 74
<i>United States v. Farrington</i> , 5 Fed. 343	41
<i>United States v. Gale</i> , 109 U. S. 65	26
<i>United States v. Hagan</i> , 27 Fed. Supp. 814	31
<i>United States v. Hess</i> , 124 U. S. 483	29
<i>United States v. Kilpatrick</i> , 16 Fed. 765	42
<i>United States v. McClure</i> , 4 Fed. Supp. 668	26
<i>United States v. Murphy</i> , 224 Fed. 554	23, 25
<i>United States v. New York Cent. & H. R. R. Co.</i> , 146 Fed. 298	31
<i>United States v. Perlstein</i> , 120 F. (2d) 276	41
<i>United States v. Renda</i> , 56 F. (2d) 601	73
<i>United States v. Ross</i> , 92 U. S. 281	18
<i>United States v. Sager</i> , 49 F. (2d) 725	31
<i>United States v. Socony-Vacuum Oil Co.</i> , 310 U. S. 150	69
<i>Vicksburg & Meridian Rail'd v. O'Brien</i> , 119 U. S. 99	72
<i>Walker v. United States</i> , 93 F. (2d) 383, cert. denied 303 U. S. 644	26
<i>Weniger v. United States</i> , 47 F. (2d) 692	74

	Page
<i>Wight, Petitioner</i> , 134 U. S. 136	15, 16
<i>Williams v. United States</i> , 168 U. S. 382, 389	30
<i>Williams v. United States</i> , 275 Fed. 129	26
<i>Wilson v. Clement</i> , 126 Fed. 808	24
<i>Wilson v. United States</i> , 104 F. (2d) 81	26
<i>Yundt v. The People</i> , 65 Ill. 372	13
 Statutes:	
Ill. Rev. Stats., 1939, c. 78, Secs. 1, 25	21, 25
Ill. Const. Art. IV, Sec. 12	21
Judicial Code, Sec. 79, 28 U. S. C., Sec. 152	15
Judicial Code, Sec. 275, 28 U. S. C., Sec. 411	3, 22, 23
Judicial Code, Sec. 276, 28 U. S. C., Sec. 412	3, 23
1 Mississippi Code (1930), c. 21, Sec. 1198	13
2 Minn. Stat. (Mason, 1927), Sec. 10638	13
R. S., Sec. 800, 28 U. S. C., Sec. 411	3, 20
R. S., Sec. 1025, 18 U. S. C., Sec. 556	26
R. S., Sec. 5403, 18 U. S. C., Sec. 234	58
R. S., Sec. 5451, 18 U. S. C., Sec. 91	30
18 U. S. C., Sec. 88	3
18 U. S. C., Sec. 91	3
 Texts and Miscellaneous:	
Britton, Ancient Pleas of the Crown	16
1 Bishop, Criminal Procedure, Sec. 1160	15
3 Blackstone's Commentaries, p. 409	16
Canon of Professional Ethics, No. 6	35
Chicago American, September 29, 1939	5
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Sec. 147	13
Sec. 189	19
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Proffatt, Trial by Jury, Sec. 59, p. 92	13
Radeliffe and Cross, The English Legal System, pp. 191-2, 330-1	13
Rule 16 of the District Court for the Northern District of Illinois	15, 55
Stephen, History of Criminal Law of England, p. 274	13
2 Story on the Constitution, Sec. 1784, pp. 563-564	13
Thompson & Merriam, Juries (1882), Sec. 696, p. 734	13

Supreme Court of the United States

OCTOBER TERM, 1941

No. 30

DANIEL D. GLASSER, PETITIONER,

vs.

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.*

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The trial court filed no opinion. The opinion of the Circuit Court of Appeals (R. 1117-1139) is reported in 116 F. (2d) 690.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 13, 1940 (R. 1139-1140). A petition for rehearing was denied on January 23, 1941 (R. 1239). Petition for a writ of certiorari was filed February 28, 1941, and was granted on April 7, 1941 (R. 1245). The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Whether a defendant may be tried and sentenced as for conspiracy to commit an infamous crime when

1.) The indictment, upon which the trial was had, was not returned by a grand jury in open court;

2.) Women qualified for jury service under State law were excluded from the grand jury;

3.) Half the trial jury was selected by a single private society, and specially coached by the prosecutors before trial;

4.) The indictment itself charged no violation of the laws, and was so indefinite and uncertain as not to inform petitioner of the charge against him;

5.) By the action of the trial court in assigning petitioner's counsel to defend a co-defendant with conflicting interests, petitioner was deprived of effective right to counsel of his own choosing;

6.) The trial court adopted a partisan attitude, admitted highly prejudicial hearsay evidence, indulged in hostile cross-examination of defendant, made flagrantly prejudicial remarks, prevented and confused the examination of witnesses for the defense, assumed the role of prosecutor, and made statements of fact demonstrably erroneous;

7.) The prosecutors removed, deprived petitioner of access to, and lost, exhibits admitted in evidence and essential to petitioner's defense; unlawfully mutilated exhibits by clandestinely writing explanations thereon after their admission in evidence; assumed the role of witness by leading questions and reiteration of asserted facts not otherwise of record; read to the jury only prejudicial parts of ex-

hibits; and surreptitiously submitted to the jury pre-trial statements not admissible in evidence; and

8.) There was no relevant evidence showing petitioner to be a party to the alleged conspiracy or that he was guilty of any other unlawful or improper acts.

STATUTES INVOLVED

The statutes involved are:

U. S. C., Title 18, sec. 88 (Criminal Code, sec. 37).

U. S. C., Title 18, sec. 91 (Criminal Code, sec. 39).

U. S. C., Title 28, sec. 411 (Judicial Code, sec. 275).

U. S. C., Title 28, sec. 412 (Judicial Code, sec. 276).

Illinois Rev. Stats., pp. 1908, 1913.

They appear in the Appendix, p. 80.

STATEMENT

The petitioner, Daniel D. Glasser, was an Assistant United States Attorney for the Northern District of Illinois from March 13, 1935, until June 23, 1939 (R. 186-187). He was in charge of prosecution of all liquor violation cases at Chicago from June, 1935, to April, 1939. In the course of this work, he handled almost one-fourth of all the cases in that office in which there were 18 Assistant United States Attorneys (R. 1038).

Unfortunately, particularly for Glasser, there arose a sharp diversity as to policy between the office of the District Attorney and the local Alcohol Tax Unit. The former, in accordance with the thought of at least one of the district judges (R. 719) and the announced policy of the Department of Justice¹ sought to strike at the roots and convict responsible individuals rather than their agents and other petty violators (R. 895-896, 897). In some instances, this diversity of policy caused the District Attorney's office to make independent investigations on its own behalf. As a re-

¹ Department of Justice Circular No. 2743 to all United States Attorneys, dated August 28, 1935 (Orig. Ex. 199, R. 913).

sult, there was constant friction and two-thirds of the agents of the Chicago Alcohol Tax Unit were transferred elsewhere (R. 898-899, 905). Finally, in the trial of a minor bootlegger for transportation, it appeared that information as to major wholesale vendors available to the Alcohol Tax Unit had been by it withheld from the office of the District Attorney (R. 719,898). The Alcohol Tax Unit representatives, called for explanation by Judge Barnes, asserted that an incompetent agent had made a poor investigation report as to the major violators and therefore the report had not been transmitted to the District Attorney. In the course of this explanation, however, it appeared that the agent who had ventured to make this investigation and report had been discharged (R. 720).

Later, the April, 1937, grand jury ² required the appearance of Yellowley, District Supervisor of the Alcohol Tax Unit (R. 946). After his appearance and before the discharge of the grand jury, Yellowley solicited the foreman thereof to come to his hotel room. This resulted in contempt proceedings against Yellowley, handled by petitioner (R. 1031). The answer of Yellowley admitted the impropriety of his acts and that the conference related solely to the inquiry then being made by the grand jury (R. 1032-1034).³ It is not denied that, subsequently, Yellowley threatened him with the statement (R. 948):

Mr. Glasser, I will get you if it is the last thing I ever do.

Thereafter, on December 9, 1938, agents under Yellowley arrested one Paul Svec, who was then appealing from a two-year sentence on a conviction obtained by Glasser. He

² This jury made a report emphatic in its criticism of the policy and conduct of the Alcohol Tax Unit above referred to (R. 789-795). Offer of proof of this report was denied (R. 795).

³ Offer of proof of this petition and answer was denied (R. 1031-1034).

was taken to their office, there furnished with petitioner's unlisted phone number and told to call petitioner and have him guarantee to the agents payment of money to them (R. 584-585, 932-933). This attempt at entrapment failed and was fully disclosed by the prompt action of Glasser in secreting an agent of the Federal Bureau of Investigation in his office where the agent overheard a conversation with Svec in which the latter confessed and said (R. 565):

The agents told me they would let me go if I did this telephoning. (See R. 583-585, 932-935).

Svec further stated that he had never before tried to fix his cases (R. 566, 584). This conversation, curiously enough is set forth in the indictment herein as overt Act No. 22 (R. 19).

Shortly after the appointment of a new District Attorney, Glasser, among a number of other assistants, resigned.⁴

On September 29, 1939, an indictment in two counts was filed against petitioner and four others in the District Court for the Northern District of Illinois. The first count was dismissed (R. 100, 715). The second, in substance, alleged that one Kretske, from March 15, 1935, to April 15, 1937, and Glasser, since March 15, 1935, were assistant United States attorneys whose duties included the prosecution of various persons charged with violations of the Federal internal revenue laws, and the presentation to grand juries of facts furnished to them by Alcohol Tax Unit investigators indicating that certain persons were guilty of offenses against such laws (R. 22-27). It charged the peti-

⁴ At this time the District Attorney, W. J. Campbell, paid high tribute to the record of Glasser, saying "Mr. Glasser has the best records of convictions of anyone in this office and his record in alcohol cases is the best in the country. Since I have been in office, he has prosecuted ninety-nine cases and lost only one. He hasn't lost a jury case in three and one-half years." Chicago American, September 29, 1939.

tioner and others with conspiracy to defraud the United States of the conscientious services of an Assistant United States Attorney by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States with the intent to influence his decision and action on certain cases which were at times brought before him in his official capacity and with intent to influence such officer to commit and collude in committing certain frauds on the United States, and to induce such officer to do and to omit from doing certain acts in violation of his lawful duty (R. 22, 28).

The petitioner, with the other defendants, filed a motion to quash supported by affidavit, on the ground that the indictment had not been properly returned in open court and was, therefore, void (R. 141, 142, 149) and on the further ground that the grand jury was illegally constituted by reason of the deliberate exclusion of women's names from the jury box from which the names of the grand jurors were drawn (R. 141, 143-149). The motion to quash was denied (R. 42, 151).

On the day of the selection of the jury, in spite of objection by petitioner made personally and by his counsel on the ground that his interests were adverse (R. 180-181), the court appointed the attorney who had been theretofore retained by petitioner and was representing him alone, to act also as counsel for the defendant Kretske (R. 183).

The underlying theory of the Government's case is very vague (R. 154-155, 160). As stated by the District Attorney, it was that "there was a conspiracy on foot to solicit certain persons to make promises" (R. 154).

The proof by the Government attempted merely to show that money for the purported corruption of petitioner or others (third persons) had been paid by accused persons to certain of petitioner's co-defendants upon promises by such co-defendants that their cases would be "fixed". In addi-

tion, the Government showed merely that as to some of these accused persons the United States Commissioner discharged, or the grand jury voted no bills. However, neither the United States Commissioner nor any grand juror—nor, indeed, any other person—testified to any unfaithful conduct on the part of the petitioner. The utter lack of evidence of wrongdoing by petitioner is pointed out below.

Nevertheless, all of the defendants were found guilty. Petitioner filed a motion for new trial and in arrest of judgment (R. 1046) supported by an uncontradicted affidavit to the effect that by reason of total and systematic exclusion of persons otherwise qualified, he did not have a trial by jury free from bias, prejudice and prior instruction (R. 1049-1051). This motion was denied and exceptions were noted (R. 103). Petitioner was sentenced to confinement in the penitentiary for fourteen months (R. 1068).

The Circuit Court of Appeals affirmed (R. 1139-1140).

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In holding that the record shows that the indictment was returned into open court by a grand jury.

2. In failing to hold that the jury commissioner and the clerk of the district court violated the laws of the State of Illinois and of the United States with reference to the selection of the grand jury.

3. In holding that the trial court did not abuse its discretion in denying petitioner's motion for new trial based on an uncontradicted affidavit affirmatively showing and offering to prove illegal and prejudicial composition of the trial jury.

4. In failing to hold that the indictment was insufficient in law because it is vague, indefinite, and fails to charge a

violation of law which may properly be made the basis of a conspiracy count against such an officer.

5. In failing to hold that the appointment by the trial court of petitioner's counsel to act as counsel as well for a co-defendant having conflicting interests substantially impaired the constitutional rights of the petitioner to have effective assistance of counsel and to due process of law.

6. In holding that the acts and conduct of the trial judge and the misconduct of the prosecuting attorney, permitted and condoned by the trial judge, did not deprive the petitioner of the benefit of the presumption of innocence and the right to a fair trial.

7. In failing to hold that there was no evidence in the record to support the judgment and that therefore reversal of the judgment was required.

SUMMARY OF ARGUMENT.

1) *No return of indictment by grand jury.*—There was no indictment returned against petitioner by any grand jury in open court or otherwise. The recognized rule requires "that the record must show that the indictment was returned into court by the grand jury either by a minute entry to that effect or by indorsement of the fact upon the indictment itself, and that an omission will be fatal." Here, the defect, after it had been pointed out by petitioner, was sought to be cured by an "addition" to the motion slip respecting the discharge of the grand jury—which "addition" merely stated that, "the Grand Jury return 4 indictments in open court" without specifying against whom they were returned and without stating who made the "addition" or upon what authority. But the law is settled that such a correction can be made, or omission supplied, only by formal order of the court, *nunc pro tunc*, in the proceedings for which the parties would have a right to notice and to participate; and

no such proceedings have here been held or even attempted. The matter is fundamental, since it is the basis upon which all subsequent proceedings are had and is an essential in order to assure compliance with the express requirement of the Fifth Amendment. Here there is not merely a failure to satisfy the fundamental law, but an *ex parte* and clandestine attempt to alter the record as well.

2) *Women excluded from grand jury*.—The jury commissioner and the clerk of the district court violated the laws of the State of Illinois and of the United States with reference to the selection of the grand jury, by arbitrarily excluding women therefrom. The Federal statute requires that jurors in the courts of the United States shall have the same qualifications as jurors of the highest court of law of the State at the time when they are summoned for service (28 U. S. C., sec. 411). Consequently, a Federal grand jury, drawn from a list of grand jurors from which women were excluded contrary to the requirements of Ill. Rev. Stats., 1939, c. 78, secs. 1, 25, could not lawfully return the indictment upon which the present proceeding is founded.

3) *Half of trial jury "packed"*.—At least half of the trial jurors were illegally and prejudicially selected. Trial jurors are required to be selected by the clerk of court and a jury commissioner (Judicial Code, sec. 276, 28 U. S. C., sec. 412). After trial, petitioner discovered that all women whose names were placed in the jury box from which the petit jury venire was drawn had been presented to the clerk of the court by the Illinois League of Women Voters and had been prepared by that League from its membership. Six of these women served on the jury in petitioner's trial. The motion for new trial, accompanied by the affidavit of petitioner, clearly required a new trial since the selection of half of those serving on the jury had been made by persons having no authority to select them. These jurors were, more-

over, selected not merely by and from a private society, but were further restricted to those members who "had attended jury classes whose lecturers presented the views of the prosecution." Not merely was the jury unlawfully constituted, but the illegality involved no mere technicality or irregularity.

4) *Vague and insufficient indictment.*—The indictment is void for uncertainty, and it charges no crime under the Federal laws. It fails to inform petitioner "of the nature and cause of the accusation" against him (Const., Art. VI) or to sufficiently define the charge so as to enable him subsequently to avail himself, upon a further prosecution for the same cause, of his right to immunity from double jeopardy (Const., Art. V). Moreover, the indictment, if it alleges a crime at all, charges a "conspiracy" to commit the substantive offense of bribery of petitioner; but since that substantive offense itself necessarily involves a concert of action and a plurality of agents, there is no place for a charge of conspiracy, and such a charge is wholly without authority of law.

5) *Deprivation of right to counsel.*—Petitioner, by the action of the trial court and through no fault of his own, was deprived of the effective assistance of counsel specifically guaranteed by the Sixth Amendment. After petitioner had selected and secured counsel, the trial court, arbitrarily and over the objection of both counsel and the petitioner, appointed petitioner's counsel to act as counsel for another defendant in the same trial whose interests were adverse to those of petitioner. The prejudicial effects of this action are clearly shown upon the record.

6) *Misconduct of trial judge.*—The conduct of the trial judge deprived the petitioner of the presumption of innocence and of a fair trial. He erroneously admitted highly

prejudicial hearsay reports of Alcohol Tax Unit agents which purported to summarize testimony which witnesses would give if summoned before a grand jury. His hostile cross-examination and frequent prejudicial remarks constituted a departure from the required attitude of impartiality and deprived the petitioner of the benefit of much evidence offered on his behalf. He undertook to state facts supposedly known to him personally, but not shown by the evidence and in part erroneous. His repeated acts of advocacy far exceeded his right to examine witnesses for purposes of clarification of the record. His hostile questions, in at least one case based entirely on facts assumed and without foundation in the record, clearly impaired the credibility of petitioner's witnesses with the jury, nullified the testimony of witnesses for petitioner, and misrepresented to the jury the measure of petitioner's duties at the arraignment of accused persons.

7) *Misconduct of prosecutor.*—The improper conduct of the prosecuting attorney clearly violated the right of petitioner to a fair and impartial trial. In breach of a specific rule of court, the prosecuting attorneys took physical possession of, and refused petitioner access to, exhibits introduced in evidence and important to petitioner's defense. The prosecutor illegally removed from the office of the clerk, and lost, exhibits constituting part of the record essential to the defense. An assistant prosecutor unlawfully mutilated exhibits, by writing explanations thereon after the trial had ended. And the prosecutor by his leading questions frequently assumed the role of witness, misled the jury by reading only part of the testimony of a witness before a grand jury, was allowed to assume in his questions the existence of wholly unproved but highly damaging facts, and surreptitiously submitted to the jury pre-trial statements not admissible in evidence.

8) *Utter lack of evidence.*—The evidence in the record fails utterly to show that petitioner was a party to, or had knowledge of, any conspiracy or other unlawful design. There was no evidence of any kind, either direct or indirect, that petitioner ever received a bribe or solicited any. Indeed, the prosecutor stated that “there isn’t anything in this indictment that says that anybody paid Glasser a bribe.” The proof offered by the Government merely shows the solicitation and payment of money, *wholly by, from, and to third parties*, with hints and innuendoes that it was to be used for the corruption of petitioner. No shred of evidence indicates participation by petitioner. At most, some of his co-defendants are shown to have traded upon their assumed or asserted ability to influence petitioner. There is not even a showing that, in any specific case, petitioner was in any respect remiss in his duty as a prosecutor. The record wholly fails to sustain the conviction.

ARGUMENT

I.

THE RECORD FAILS TO DISCLOSE THAT THERE WAS AN INDICTMENT RETURNED AGAINST THIS PETITIONER BY ANY GRAND JURY IN OPEN COURT OR OTHERWISE

The petitioner, with the other defendants, filed a motion to quash the indictment because, among other things, “the said indictment was not properly returned in open court” (R. 142). The affidavit in support alleged that the records of the clerk of the court fail to show that the indictment was returned in open court (R. 149). The court denied the motion to quash (R. 42, 151).

1. *The record is required to show that the grand jury, and not the foreman alone, returned the indictment into court.* On appeal, the Circuit Court of Appeals acknowledged that (R. 1119):

it must be made to appear from the record that the grand jury appeared in open court and returned into

court the indictment to which the defendant is required to plead.

In *Ledbetter v. United States*, 108 Fed. 52, 55 (C. C. A. 5), the court stated the rule as follows:

It seems to be well settled that the record must show that the indictment was returned into court by the grand jury either by a minute entry to that effect or by indorsement of the fact upon the indictment itself, and that an omission will be fatal. See authorities cited in volume 10, Am. & Eng. Enc. Law, pp. 410, 411. It may be noticed that a defective record may be cured by proper entry ordered by the court during the term, or, if not called to the attention of the court during the term, then by proper order entered nunc pro tunc at a subsequent term.

This rule is universally recognized. *Renigar v. United States*, 172 Fed. 646 (C. C. A. 4) and authorities cited; * *Angle v. United States*, 172 Fed. 658; *Rainey v. The People*, 8 Ill. (3 Gil.) 71, 72; *Yundt v. The People*, 65 Ill. 372, 373; *Commonwealth v. Cawood*, 2 Va. Cas. 527, 541; see *State v. Squire*, 10 N. H. 558, 559; 1 Chitty, Criminal Law (5th ed.), pp. 324, 720; Edwards, The Grand Jury, p. 154; Proffatt, Trial by Jury, sec. 59, p. 92; Radcliffe and Cross, The English Legal System, pp. 191-2, 330-1; Stephen, History of Criminal Law of England, p. 274; 2 Story on the Constitution (5th ed.), sec. 1784, pp. 563-564; Thompson & Merriam, Juries (1882), sec. 696, p. 734.⁵ The Circuit

⁵ Cf. Code of Criminal Procedure, American Law Institute, Official Draft (1931) sec. 147. The commentary to this section, pp. 526-528, includes an incomplete list of state statutes (See *e. g.*, 2 Minn. Stat. (Mason 1927) sec. 10638; 1 Mississippi Code (1930) c. 21, sec. 1198) which recognize the constitutional right to a return by the grand jury by specifically requiring that the return be presented by the foreman to the court in the presence of the grand jury. These statutes, of course, are but declaratory of the common law practice. *Green v. State*, 19 Ark. 178, 185; *Cachute v. State*, 50 Miss. 165, 170.

Court of Appeals held, however, that the record satisfied this requirement.

The only basis upon which the court could have so held that there was a return of indictment against petitioner was a surreptitious, anonymous, and unauthorized entry—which may not properly be deemed part of the record—in the form of an entry on a motion slip made during the October term subsequent to the initialing of the slip by the court on the occasion of the discharge of the September grand jury (R. 39).⁶ Petitioner, by an examination of the record and the clerk's papers first ascertained that there was nothing to show a return by a grand jury of an indictment against him. At the time of his examination the motion slip initialed by the court, "JHW" (James H. Wilkerson), contained a single entry: "Order discharging Grand Jury of Sept. Term 1939." At the argument on the motion on November 7, 1939, the motion or minute slip above referred to was produced by the clerk at the defendants' request.⁷ It was then discovered to bear the added entry: "The Grand Jury return 4 Indictments in open Court. Added 10/30/39." (Emphasis ours.) (R. 39.)

This entry was without notice to petitioner, without an authorizing order of court, and without initials to identify by whom or by whose authority it was made. Aside from the fact that this entry identifies none of the indictments returned, it is not without significance that the date of this entry is the last day on which the petitioner's notice of

⁶ A photolithograph copy of this slip appears at page 23 of petitioner's reply brief on petition for certiorari. The certified original has been filed with the Clerk of this Court.

⁷ The minute slip, of course, was a mere recording of the activities of the September grand jury constituting no part of the record in any particular case (cf. *Green v. State*, 19 Ark. 178, 183). Although it might well be that it would ordinarily have been included in the transcript, it is plain from the endorsement "Df. Ex. 1 11/7/39" that it was here included by virtue of the petitioner's introduction of it at the argument.

motion and motion to quash could have been served on the United States Attorney.⁸

2. *The unauthorized entry is without effect since a nunc pro tunc order was required.*—This entry of October 30, 1939, was not made during the term of court at which the clerk's endorsement purports to show that an indictment was filed, Sept. 29, 1939. A new term of court had commenced on the first Monday of the month, October 2, 1939. Judicial Code, sec. 79, 28 U. S. C. sec. 152.

Since it purports to relate what happened at a prior term, this entry was fatally defective because unauthorized by a *nunc pro tunc* order of the court. Without such an order the addition, whether by the clerk or by any other person, was entirely lacking in significance.⁹ The requirement, as stated in 1 Bishop, Criminal Procedure, sec. 1160, is approved by this Court in *Wight, Petitioner*, 134 U. S. 136, 143-144:

When the term of the court has closed, it is too late to undo, at a subsequent term, what was done at a former term. A judgment of the court, for instance, cannot then be opened, and modified or set aside. Neither, it has been held, can the clerk, at a subsequent term, make an entry of what truly transpired at the preceding term. But this refers to the power of the clerk, proceeding of his own motion. The court may order *nunc pro tunc* entries, as they are called, made to supply some omission in the entry of what was done at the preceding term; yet this is a power the extent of which is limited, and not easily defined.

⁸ Petitioner's motion to quash was filed October 31, 1939 (R. 40); but, under Rule 26 of the district court, the motion was required to be served on the United States Attorney not later than 4:00 P. M. of the prior day, October 30.

⁹ This must be particularly true where as here, it appears that during the October Term at which the amending entry was made, a different judge, Judge Sullivan, and not Judge Wilkerson, entered all orders in the case (R. 39, 40).

The object of the rule appears from its first enunciation (Britton, *Ancient Pleas of the Crown*) as quoted by this Court in the *Wight* case, *supra*, p. 144). As paraphrased in 3 Bl. Comm., p. 409, the declaration in effect provided:

that a record surreptitiously or erroneously made up, to stifle or pervert the truth, should not be a sanction for error; and that a record, originally made up according to the truth of the case, should not afterwards by any private rasure or amendment be altered to any sinister purpose.

Protection of the verity and sanctity of the records (Cf. *Bilansky v. State*, 3 Minn. 427, 430) thus required that the entry to show return of the indictment by the grand jury at a prior term be made only upon order of the court. The motion to quash did not merely aver the omission of the proper entry of presentation by the grand jury but denied that it was in fact returned (Cf. *Johnson v. State*, 24 Fla. 162). Because it was the foundation of all subsequent proceedings and essential to his protection against being forced to defend against charges never acted upon or presented by a grand jury and because it involved no mere correction of an entry recording what had admittedly taken place, but was entirely new, as to a fact denied, this error involves no mere technicality or formality. *Rainey v. People*, 8 Ill. (3 Gil.) 71, 72; *Gardner v. People*, 20 Ill. 430, 432-433 (1858). The ordinary safeguards were applicable. The United States as moving party for correction had the burden of proof; the petitioner had the usual rights of being present, of inspection of any memoranda offered as a basis for the correction, the right of cross-examination and the right to offer proof. *Downey v. United States*, 67 App. D. C. 192, 91 F. (2d) 223, 230, 231, 233; *Hogan v. Hill*, 9 Fed. Supp. 333, 335; *Green v. State*, 19 Ark. 178, 189; *Felker v. State*, 54 Ark. 489, 491-492. Because made without an order, therefore, this entry has no more effect than

if it had never been made. *Bowen v. State*, 81 Ga. 482, 483, 8 S. E. 736.

The added entry has no probative value.—Even if the absence of a *nunc pro tunc* order be disregarded, the mere statement: “The Grand Jury return 4 Indictments in open Court” obviously has no tendency to show that indictment was ever returned against petitioner. Since the indictments there referred to are identified neither by name, number, or otherwise, the clerk may not be said to have certified that this indictment was one of them, and there is nothing in the record by which it could be identified as such. Plainly, a minute entry such as this, whether it recites the return of 52 bills, as in the *Ledbetter* case, or of only 4 bills as here, is meaningless so far as petitioner is concerned. *Ledbetter v. United States*, 108 Fed. 52 (C. C. A. 4); *Cornwell v. State*, 53 Miss. 385, 389; *Bodkin v. State*, 20 Ind. 281, 282.

3. *The entries properly made afford no basis for a presumption that return was made by the grand jury.*—There is no room for presuming return of an indictment on the basis of a filing endorsement such as that appearing in this indictment (cf. *Mose v. United States*, 35 Ala. 421). Presumptions, of course, should not be indulged against a person accused of crime. *Laura v. Mississippi*, 26 Miss. 174, 176; cf. *Crain v. United States*, 162 U. S. 625, 645. In any event, however, no such presumption may be applied here. In the first place, the larger part of the endorsement by the clerk was but a printed form, the written part (indicated by italics) consisting only of the date and signature, as follows: “Filed in open court this 29 day of *September*, A. D. 1939. *Hoyt King*, Clerk.”¹⁰ More important, however, is

¹⁰ Because the Circuit Court of Appeals (R. 1119) and the Government (Br. in Opp., p. 11) both assert that the endorsement is “in the clerk’s own handwriting,” there has been filed with the clerk for the information of this court a duly certified photostatic copy of the back of the indictment bearing this endorsement.

the fact that the placita of the clerk shows only that "(it being the twenty-ninth day of September the indictment was filed)" (R. 1); and further, despite the inclusion in petitioner's Praeceptum for Record of a request for "Return of indictment and order to file same * * *" (R. 132), the clerk's caption states merely that the indictment "was filed in the clerk's office of said court" (R. 2). The clerk's caption thus contradicts his endorsement on the indictment. For one says "Filed in open court" and the other says "filed in the clerk's office". Since this leaves the record equally consistent with the non-existence of the fact of filing in court as with the existence of such fact, there is left no basis upon which to found the presumption of return by the grand jury. *United States v. Ross*, 92 U. S. 281. Certainly, in the light of the record showing of serious breach of official duty by the same clerk's office (see *infra*, pp. 55-56), it would be sheerest casuistry to indulge the presumption here.

No considerations of secrecy prevent conformity to the established practice.—It has at various times been suggested that the common law requirement has been dispensed with as valueless in protecting the rights of the accused. This obsolescence is asserted to have resulted from the discontinuance of the practice of announcing the name and describing the purport of the indictment, necessitated in prevention of escape from the jurisdiction between such announcement and the arrest. But this amounts to saying that a safeguard integral in the constitutional guaranty may be dispensed with by reason of the conveniences of law enforcement. Aside from this inherent fallacy, the argument is answered by the fact that numerous States by statute not only specifically require that the indictment be returned in open court but as well provide that the fact of indictment shall not be by any officer divulged until the accused has been arrested or bailed. (See e. g.,

N. Y. Criminal Code, Book 66 (McKinney's Cons. Laws), sec. 272; Mich. Stats. Anno., Sec. 28, 965; see Code of Criminal Procedure American Law Institute, Official Draft (1931), sec. 189, commentary, pp. 597-598, listing other State statutes.) The suggested difficulty, more apparent than real, is in such jurisdictions obviated either by (1) allowing the clerk to endorse the fact of return on the indictment, entering the indictment on the public record only after apprehension of the accused, or (2) by identifying the indictment by letters or numbers in the record entry. *State v. Knowlton*, 115 Maine 544; *State v. Sloan*, 309 Mo. 498, 507-508.

Thus the protection of having the grand jury present when the indictments are delivered into court may be substantially preserved without increasing the difficulties of enforcement.

Conclusion.—The requirement that an indictment be returned in open court is essential to the attainment of the underlying purpose of the requirement of the Fifth Amendment that indictment be by a grand jury—protection of the citizen against unfounded accusation, whether it be prompted by government officers or by partisan passion or private enmity, or be the result of mistake. *Ex parte Bain*, 121 U. S. 1, 11; *Charge to Grand Jury*, Fed. Cas. No. 18,255, at p. 993; *Gardner v. People*, 20 Ill. 430, 432. The Arkansas court stated the basic considerations favoring continued observance of this rule as follows (*Green v. State*, 19 Ark. 173, 189):

In our country, where there is no political or religious persecution to interfere with the impartial administration of the criminal law, an adherence to technical rules may, in some cases, seem to produce inconvenience, rather than subserve the substantial purposes of justice. But we know not what storms and revolutions the future may produce, and the time may

come, even in our own country, when the wisdom of adhering to these long established rules will be manifest.

In the case now before this Court, there has been not merely a failure to satisfy the requirements of law; but an *ex parte* and clandestine attempt to alter the record as well. The judgment must, therefore, be reversed.

II

THE JURY COMMISSIONER AND THE CLERK OF THE DISTRICT COURT VIOLATED THE LAWS OF THE STATE OF ILLINOIS AND OF THE UNITED STATES WITH REFERENCE TO THE SELECTION OF THE GRAND JURY BY ARBITRARILY EXCLUDING THE NAMES OF WOMEN FROM THE BOX FROM WHICH THE LIST OF GRAND JURORS WAS DRAWN

Petitioner, with the other defendants, based his motion to quash upon the ground that the grand jury was composed exclusively of men, and that women, although they constitute a substantial part of the population of the Northern District of Illinois and of the registered voters of that District, were excluded from the box from which the list of grand jurors were drawn, in violation of the Federal statute (R. 141). The affidavit in support showed that the list of sixty names drawn for the purpose of selecting the grand jury were all male persons and the members of the grand jury as finally impanelled were all persons of the male sex (R. 143-144). The United States Attorney filed a motion to strike (R. 150). After hearing argument, the court denied the motion (R. 42, 151).

The motion was based on the requirement of R. S., sec. 800, 28 U. S. C. sec. 411:

Jurors to serve in the courts of the United States, in each state respectively, shall have the same qualifications . . . and be entitled to the same exemptions, as jurors of the highest court of law in such state may

have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.

Under Illinois law, at the time when these grand jurors were summoned, the Illinois statutes specified the qualifications of jurors of the highest court of law of the State as being "the legal voters (or electors) of each sex." Ill. Rev. Stats., 1939, c. 78, sec. 1, as amended by Senate Bill No. 88, and sec. 25, as amended by Senate Bill No. 89, both effective July 1, 1939 (Ill. Const. Art. IV, sec. 12).¹¹

In the court below the government conceded that under Section 25 jury commissioners were required to place women on jury lists on and after July 1, 1939. But it argued that in counties of less than 250,000 the county boards had the right to wait until at least September 1, 1939.

Accepting this contention, the Circuit Court of Appeals said (R. 1118):

Under the Act in question the county boards of 17 of these counties were privileged to wait until September 1, 1939, before including women on the jury lists.

¹¹ Ill. Rev. Stats., 1939, c. 78:

Sec. 1. [Applicable to counties not having commissioners. See sec. 2] The county board of each county shall, at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct of the county, giving the place of residence of each name on the list, to be known as the jury list.

• • • • •

Sec. 25. [Applicable to counties of over 250,000 population, having jury commissioners] • • • The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list.

The government in the brief in opposition to petition for certiorari says:

The clerk and the jury commissioners were, however, commanded by U. S. C. Title 28, sec. 411, to place upon jury lists only those who were at the time they were summoned eligible for jury service in the highest court of law in the State for which jurors were selected. Section 1 of Chapter 78, although effective on July 1st, prior to the summoning of the grand jury in the instant case, does not purport to make women immediately eligible for such service, but only when their names were placed on the jury list by the county boards, and the boards were privileged to defer their action until their September meeting.

This argument is fallacious in its confusion of statutory "qualification" with ministerial "selection" or "eligibility". So doing, it proves too much. If the argument means anything, eligibility of a woman for Federal jury service is to be tested by the question whether her name has been placed on a list by a county board.

If, as the government argues, the non-performance by the State bodies of their functions in carrying out the State law is to limit the action and measure the duty of the Federal court jury commissioners under the Federal statute, then there would appear to be no rational reason why the Federal jury commissioners could not have postponed compliance with the law until women had in fact been empanelled on a State court grand jury.

It is, of course, absurd to read into "qualifications" as used in 28 U. S. C. sec. 411, the requirement that persons otherwise qualified under the State statute must also have actually been listed on the State court jury list. It is obvious from the wording of the Illinois statute that it contemplated the possibility that, because of exhaustion of the old, a new list might be required before the September meeting

of the county commissioners and that in such event, i. e., whenever after July 1, 1939, the process of selection of grand jurors should be begun, females should not be excluded because of their sex.

This complete disregard of the statute, resulting in exclusion from the grand jury list of approximately one-half of those otherwise qualified for service, is obviously no mere irregularity.

III

THE TRIAL JURY WAS PACKED BY THE ILLEGAL DELEGATION OF THEIR DUTIES BY THE CLERK AND THE JURY COMMISSIONER IN VIOLATION OF THE PETITIONER'S RIGHT TO AN IMPARTIAL TRIAL

By statute, the trial jurors were required to have the same qualifications as jurors of the highest court of the State. Judicial Code, Sec. 275, 28 U. S. C. Sec. 411 (Appendix, p. 80). At least 300 names are required to be placed in the jury box from which a venire is drawn; and those names are required to be selected by the clerk and a jury commissioner. Judicial Code, Sec. 276, 28 U. S. C. Sec. 412 (Appendix, p. 81); *United States v. Murphy*, 224 Fed. 554, 562

In support of his motion for a new trial Glasser filed an affidavit (R. 1046, 1049-1051) ¹² stating that *all* of the names of females placed in the jury box from which the petit jury in this cause was drawn were "presented to the clerk of the court * * * who is one of the jury commissioners, by the Illinois League of Women Voters, which list had previously been prepared by said league of women voters from their membership" (R. 1050). The motion was denied (R. 103,

¹² The motion was entered March 8, 1940 (R. 101), continued to April 8 (R. 101) and to April 22 (R. 102). The court heard "arguments of counsel" on April 22, 1940 and continued the case for disposition to April 23, 1940 (R. 102, 1046). On April 23, 1940, Glasser filed his affidavit in support of his motion for new trial (R. 1046, 1049-1051).

1059). On appeal, the Circuit Court of Appeals held (R. 1139):

In the instant case the trial court in passing upon the motion for a new trial did consider the affidavits filed and was convinced that the appellants were in no wise prejudiced by the incidents complained of. Under such circumstances we cannot say that the District Court had abused the discretion vested in it by law.

The Circuit Court of Appeals erred in approving this manifest violation of Federal statute. Upon the showing here of a clear violation of the statute enacted to ensure the fundamental right to a jury representing a fair cross-section of the community, denial of a new trial was a plain abuse of discretion. Cf. *Langnes v. Green*, 282 U. S. 531, 541; *Burns v. United States*, 287 U. S. 216, 222-223.

The affidavit clearly shows that approximately one-half the names placed in the jury box (*i. e.*, the names of all females placed therein) were selected not by the clerk or jury commissioner as required by Federal statute, but by a private, unauthorized person or group. The selection involved a systematic exclusion of all except a restricted class in a single social-study organization and deprived petitioner of his right to a fair trial.

This fundamental flaw in the manner of selection of the petit jury is shown by the affidavit to have been presented at the earliest moment at which the facts became known to petitioner (R. 1050-1051), by motions for new trial and in arrest of judgment (R. 1046). Cf. *Albizu v. United States*, 88 F. (2d) 138, 141; *Ogden v. United States*, 112 Fed. 523, 524, 526; *Hyman v. Eames*, 41 Fed. 676, 678; *Wilson v. Clement*, 126 Fed. 808, 810. The affidavit offers to prove the allegations therein contained (R. 1051). Since the allegations were in no way controverted either by counter-affidavits or even by a formal denial of the grounds assigned, they were to be accepted as true for the purpose of the

motion. *Neal v. Delaware*, 103 U. S. 370, 395-396; *Ogden v. United States*, *supra*, 526-527; cf. *United States v. Chaires*, 40 Fed. 820, 823. The statement in the bill of exceptions and in the order of the court that "arguments of counsel" were heard clearly negatives the presentation of any evidence by the government (R. 1046, 102).

The affidavit states that, of the 100-person venire, 47 were female and 53 were male. This indicates that the clerk conformed to the requirement under Illinois law that the names of males and females be placed in the jury box without regard to sex. Ill. Rev. Stat. (1939), c. 78, Sec. 1 (Appendix, p. ⁸⁷64); *People ex rel. Denny v. Traeger*, 372 Ill. 11, 18. Since it is shown that the names of all females were presented by the Illinois League of Women Voters and since it appears that one-half the jury were women (R. 1244), it follows that, as to approximately one-half of the names placed in the jury box, from which the six women jurors were drawn, selection was made not by the clerk or the jury commissioner but by a single unauthorized private organization.

The trial court was without power, as a matter of discretion or otherwise, to dispense with the statutory requirement that selection be exclusively by the clerk and the jury commissioner, since it is an essential feature of the system prescribed by law and designed to secure and preserve the right to a fair and impartial trial. *Dunn v. United States*, 238 Fed. 508, 512 (C. C. A. 5); *United States v. Murphy*, 224 Fed. 554, 560, 561, 566 (N. D. N. Y.); *In re Petition for Special Grand Jury*, 50 F. (2d) 973 (M. D. Pa.); *Klemmer v. Railroad*, 163 Pa. 521, 530; *State v. Newhouse*, 29 La. Ann. 824, 825; *State v. Jenkins*, 32 Kan. 477, 479.

The error here is not a mere irregularity as to manner of selection. Cf. *Agnew v. United States*, 165 U. S. 36, 42-45; *United States v. Brookman*, 1 F. (2d) 528, 536-538 (D. Minn.), *aff'd* 8 F. (2d) 803 (C. C. A. 8); *Wilson v. United*

States, 104 F. (2d) 81, 82 (C. C. A. 5). Neither does it involve a mere solicitation by the clerk of information from varied sources preliminary to selection by the clerk in an effort to obtain what are sometimes known as "blue-ribbon" juries. Cf. *Walker v. United States*, 93 F. (2d) 383, cert. denied 303 U. S. 644; *United States v. McClure*, 4 F. Supp. 668, 671.

The error here arises from the fact that the jury has been selected by persons having no authority whatever to select them. As a result, the whole proceeding to form the panel is void and, therefore, the objection may be taken at any time. See *United States v. Gale*, 109 U. S. 65, 69; *Rodriguez v. United States*, 198 U. S. 156, 164.

Even were the delegation of authority by the clerk to be deemed but a defect or imperfection in matter of form within the meaning of R. S., Sec. 1025, 18 U. S. C. Sec. 556, cf. *Williams v. United States*, 275 Fed. 129, 132 (C. C. A. 9), the affidavit in support of petitioner's motion obviates operation of that section. For it not only concludes that there was resultant prejudice but affirmatively states the facts showing bias, i. e., that all the women whose names were presented "had attended jury classes whose lecturers presented the views of the prosecution" (R. 1050-1051). Indeed, it would seem that prejudice is necessarily implied by the showing that the jury was packed in that approximately half of the jury list names were selected, not by the clerk or jury commissioners, but by a private organization. "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community." *Smith v. Texas*, 311 U. S. 128, 130.

It seems equally plain that the action of the clerk in effectuating a systematic exclusion from the jury list of all females save members of the jury classes of the Illinois League of Women Voters constituted an administration of

the law so arbitrary as to violate the petitioner's right to due process under the Fifth Amendment.

It should not be necessary to argue, before this Court, that selection of privately-picked, specially coached, or politically associated jurors is a gross impairment of the civil right to trial by jury.

IV

INDICTMENT

THE ALLEGED INDICTMENT IS FATALLY DEFECTIVE IN FAILING TO INFORM PETITIONER OF THE CHARGE AGAINST HIM AND IN CHARGING A CONSPIRACY TO COMMIT A SUBSTANTIVE OFFENSE WHICH ITSELF REQUIRED CONCERT OF ACTION AND PLURALITY OF AGENTS

By demurrer, petitioner asserted in the trial court that the indictment was so vague and indefinite as to fail to inform him of the charge against him, making it insufficient in law (R. 48-50). This was overruled (R. 60).

The first count was dismissed upon motion of the United States Attorney (R. 100). Of the second count, the pertinent portions of the charging part, paragraph 14, alleged (R. 28):

that the defendants • • • well knowing the premises aforesaid, in the City of Chicago, in the State and District aforesaid, and at other places to the said grand jurors unknown, heretofore, on, to wit, March 15, 1935, and thereafter continuously up to the date of the return of this indictment, in violation of the provisions of Section 88, Title 18, of the United States Code of Laws, did wilfully, unlawfully, and feloniously conspire, combine, confederate, and agree together, and with each other, and with divers other persons to the grand jurors unknown, to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by a United States Attorney or an Assistant United States Attorney to prose-

cute certain delinquents for crimes and offenses cognizable under the authority of the United States as the same should be presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud, more particularly its right to a conscientious, faithful and honest representation of its interests in certain suits, controversies, proceedings, matters, actions, and causes brought and pending in the United States Courts in the Northern District of Illinois; that is to say, by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function, under and by authority of a department and office of the Government of the United States, with intent to influence his decision and action on certain questions, matters, causes, and proceedings which were at times pending, and which were by law brought before such officer or officers in his or their official capacity, and with the intent to influence such officer or officers to commit and aid in committing, and to collude in committing certain frauds on the United States, and to induce such officer or officers to do and to omit from doing certain acts in violation of his or their lawful duty.

Casual reading of this charge shows that the first part, preceding the videlicet, aside from charging the offense in the general words of 18 U. S. C. sec. 88, does little more than allege in the abstract that the United States was to be defrauded by its governmental function to be represented in court by a United States Attorney or an Assistant United States Attorney to prosecute delinquents for violation of law free from corruption, improper influence, dishonesty or fraud in certain suits and proceedings brought and pending in the United States courts in the Northern District of Illinois.

There can be but little doubt that this part of the indictment is so vague as to be inadequate to inform petitioner

of the charge against him. Particularly, it was insufficient to enable the petitioner to enjoy his right subsequently to avail himself of the right against double jeopardy in case of a further prosecution for the same cause. *United States v. Cruikshank*, 92 U. S. 542.

It fails utterly to state what, if any, definite agreement was made and stated only in the vaguest of terms the purpose of some undetailed agreement. It leaves entirely open the question as to identity of the Assistant United States Attorney to whom reference is made, fails to describe the class of delinquents it was the duty of such officer to prosecute, or the crimes involved. In purporting to particularize, this indictment merely states a broad class of facts without allegation of the primary and individualizing facts.

Since it states no facts which might properly be regarded as describing or defining the offense itself, this portion of the charge, if standing alone, would be fatally defective. *Larkin v. United States*, 107 Fed. 697, 701. *Asgill v. United States*, 60 F. (2d) 780, 783-785. As was held by this Court in *United States v. Hess*, 124 U. S. 483, 487.

Undoubtedly the language of the statute may be used in the general description of an offense, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged.

For this reason, the Government must, therefore, rely on the second part of this paragraph following the words "that is to say" in order to maintain that the indictment sufficiently charges a crime at all.

While ordinarily allegations need not be proved as laid under a *videlicet*, *Brady v. United States*, 41 F. (2d) 449, 450, where, as here, such allegations are material averments of the indictment, they must be taken as positive averments to be proved as laid (*Joyce on Indictments* (2d

ed.), sec. 307, p. 314; *Dakins* case, 2 Wm. Saund. 290, 291, 85 E. Rep. R. 1077; cf. *Anderson v. United States*, 30 F. (2d) 485; *Kutler v. United States*, 79 F. (2d) 440, 443; *Naftzger v. United States*, 200 Fed. 494, 497) and constituting an essential part of the charge. *Browne v. United States*, 145 Fed. 1, 5 (C. C. A. 2). This is confirmed by the fact that the Circuit Court of Appeals in stating what it deemed to be the substance of the charge stresses particularly the videlicet or second part of this charging paragraph (R. 1119-1120). However, even if the allegations of the videlicet may be invoked in an effort to cure the vagueness of the indictment, it is nevertheless subject to the same criticism; and the indictment is void.

Moreover, the language of the videlicet alleges an offense against the United States, not in the words of the conspiracy section but almost word for word, in the language of R. S., Sec. 5451, 18 U. S. C., Sec. 91:

Bribery of United States Officer. Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value * * * to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof * * * with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, * * * or with intent to influence him to commit or aid in committing, or to collude in, * * * the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.

This is corroborated by the statement of the prosecutor draftsman (R. 154):

This indictment follows very closely the language of Section 91.

The facts alleged and not the statute cited by the pleader determine the legal force of the averments. *Williams v. United States*, 168 U. S. 382, 389; *Outlaw v. United States*, 81 F. (2d) 805, 806.

It thus appears that the indictment charges a conspiracy to commit a substantive offense which, insofar as it involved petitioner, would require concerted action by two or more parties. Concert of action with at least one other party would be necessary to establish the substantive offense by petitioner. Since if he, an officer, with the necessary intent to influence his own decision and "to collude in committing certain frauds on the United States," were to procure another to promise, offer or give any money to him, it would necessarily contemplate active participation on his part as well as on the part of the other person.

Since concert of action and the plurality of agents would have been necessary to commission of the substantive offense by petitioner which is in the indictment charged to have been the objective of the conspiracy, the indictment is void. *United States v. Sager*, 49 F. (2d) 725, 727 (C. C. A. 2); *United States v. Dietrich*, 126 Fed. 664, 667 (C. C. Neb.) per Van Devanter, J.; *United States v. New York Cent. & H. R. R. Co.*, 146 Fed. 298, 303 (C. C. N. Y.); *United States v. Hagan*, 27 Fed. Supp. 814 (W. D. Ky.); cf. *Gebardi v. United States*, 287 U. S. 112, 121-122.

V

PETITIONER, BY ACTION OF THE TRIAL COURT AND THROUGH NO FAULT OF HIS OWN, WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE FIFTH AND SIXTH AMENDMENTS

The record shows that, as a result of the action of the court in appointing his counsel to act as counsel for another co-defendant, petitioner was deprived of the full and effective assistance counsel would otherwise have afforded him. The Government does not deny that the constitutional guarantee of the assistance of counsel includes the right of accused to have counsel unembarrassed by representation at the same trial of others whose interests are adverse and

conflicting. By reason of the theory of the prosecution and nature of the proof, the Government does not and cannot deny the resulting conflict in interests between the two defendants, Kretske and Glasser, during the course of this trial. Indeed, the Circuit Court of Appeals impliedly recognized the existence of the right and its violation in this case, erring only in holding that the appointment of Glasser's attorney to act for Kretske was not "such an error as to warrant reversal" (R. 1131).

This deprivation by the trial court prevented petitioner from adequately safeguarding his right to exclude incompetent evidence and from fully exercising his right to cross-examine the witnesses for the prosecution. The error was highly prejudicial and required reversal.

Some time before his trial, Glasser had retained as his attorney William Scott Stewart. On the day set for trial, Harrington, whose appearance had been earlier entered on November 2, 1939, as counsel for Kretske (R. 41), filed a motion for continuance (R. 173). This motion was denied and another attorney, McDonnell, was appointed for Kretske (R. 96). The following day McDonnell requested, and the court ordered, that his appointment be vacated (R. 179, 97). Thereupon, the court asked whether there was any reason why petitioner's attorney could not represent Kretske (R. 180). Mr. Stewart immediately stated that there was inconsistency in the defense of petitioner and Kretske, making specific reference to the affidavit earlier filed in support of petitioner's motion for severance in which those inconsistencies had been pointed out (R. 180, 171). He said (R. 180):

There will be conversations here where Mr. Glasser wasn't present, where people have seen Mr. Kretske and they have talked about, that they gave money to take care of Glasser, that is not binding on Mr. Glasser, and there is a divergency there, and Mr. Glasser feels

that if I would represent Mr. Kretske the jury would get an idea that they are together, and all the evidence——

Petitioner further emphatically voiced the same objection in person, stating that he wished to have exclusive representation by his lawyer (R. 181). Despite these objections, the court appointed Stewart to represent Kretske as well (R. 97, 183). Having set out the objections, Stewart could do no more, and he accepted this appointment upon insistence of the court (R. 180, 181, 183), and thereafter represented petitioner and his co-defendant, Kretske, throughout the trial.

The only evidence presented against petitioner which even purported to show wrongdoing on his part (legally inadmissible but allowed to go to the jury without objection) consisted of testimony by third persons as to conversations with alleged co-conspirators in the course of which they agreed to pay, or did pay money to Kretske or others for the alleged purpose of obtaining favorable consideration from petitioner—in which conversations Kretske was alleged to have said that the money, or part of it, would be paid over to petitioner. That the Government's evidence against Glasser would be so limited was indicated by the phraseology of the alleged indictment. (Kretske, of course, denied participation in any of these conversations (R. 799).) As against Kretske, of course, this testimony (regardless of weight) was competent and not subject to objection. As against petitioner, however, its incompetency is apparent unless and until connection of the petitioner with a conspiracy was shown. No such connection was ever shown. Nevertheless, no objection on behalf of petitioner was made to the testimony by Stewart. His reason for refraining from objection necessarily must have been a desire to protect Kretske. Had objection been made on behalf of petitioner alone and not of Kretske, the jury would have been led to believe that Kretske was admitting

the truth of the testimony; on the other hand, the same type of limited objections might have prejudiced petitioner upon inference by the jury that petitioner, who was not present at the conversation, was contesting their verity. The absence of any objection necessarily led the jury to regard the evidence against Kretske as being of equal materiality and weight against petitioner.

The following examples clearly establish the highly prejudicial consequences to Glasser which necessarily followed from designation of his counsel to act also for Kretske:

William Brantman testified that he paid \$3,000 to Kretske on behalf of one Abosketes (R. 652). Brantman testified that he did not know petitioner (R. 656). Plainly, the interests of petitioner dictated a cross-examination by which to emphasize that in this transaction there was no mention or other basis for inference that petitioner was in any way connected with it. Faced with this dilemma resulting from the conflicting interests of his two clients, the attorney Stewart requested and was allowed a postponement of cross-examination (R. 663). After considering the matter for three days, Brantman then being recalled, Stewart declined to cross-examine—apparently having determined to avoid probable prejudice to Kretske (R. 711).¹³ The damaging effect of the failure to cross-examine this witness is sustained by the comment of the court itself before sentence (R. 1061-1062). It will not do to say that because in direct examination it had appeared that Brantman did not know Glasser, there was no necessity for cross-examination. Glasser had the right to emphasize as strongly as possible by cross-examination the complete absence of reference to his name in these negotiations. The prejudice to Glasser because of its omission was, moreover, emphasized

¹³ "A lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose." Canon of Professional Ethics No. 6.

by the reiterated testimony by the judge as to his own knowledge of the law-breaking character of Abosketes, as will later appear in Point VI.

Under leading questions, a bootlegger purported to narrate statements of Kretske implicating Glasser. While Stewart objected to the leading character of the questioning, he forewent the obvious objection that this testimony was inadmissible against Glasser (R. 244-245).

Another witness for the Government, one Hodorowicz, was, without objection by Stewart, permitted to state that, at the time he paid \$800 to Kretske, the latter said that "he had to deliver the money to Red" (Red being the name purportedly used for Glasser) (R. 297).

The same witness testified that, in another conversation with Kretske, the latter said: "They got Glasser over a barrel, he can't do anything. He has to put you in jail." Although plainly prejudicial to and inadmissible as against Glasser, Stewart made no objection (R. 301).

Testimony by the same witness as to conversations of the same tenor with Kretske in connection with another case was received without objection by Stewart (R. 306).

Another witness, Edward Dewes, a confessed bootlegger, was allowed to testify that when he delivered \$100 to Kretske to obtain a no bill in the accusation against him of liquor law violation, the latter stated that "he would send it over to the 'red-head'," purporting to refer to Glasser (R. 542-543).

Another still operator, Stanley Wasielewski, without objection by Stewart, was permitted to testify that he heard Kretske say to another: "I will take care of everything between me and the red-head" (R. 631).

To precisely measure the degree of prejudice suffered by the petitioner is impossible. To do so in determining the correctness of the decision below would be to beg the constitutional question. This Court has long recognized

that the fundamental rules of fairness guaranteed by the Constitution with regard to procedure in the course of judicial inquiry, including criminal trials, may not be disregarded by reason of the degree of prejudice which may be shown in a particular case, or even by reason of the correctness of the result in the individual case. *Tumey v. Ohio*, 273 U. S. 510, 535; *Patton v. United States*, 281 U. S. 276, 292. The same principle is more fully stated by Mr. Justice Roberts in his dissent in *Snyder v. Massachusetts*, 291 U. S. 97, 136-137, where, while there was disagreement as to the existence of the asserted constitutional right, there was no division as to the principle here invoked.

But in any event, when regard is had to the liberal rules of evidence which so largely favor the prosecution in conspiracy cases, the action of the trial court in forcing petitioner to forego the benefit of undivided assistance of counsel, unhampered by regard for the interests of other defendants, plainly left him with little or none of the substance of the right to effective assistance of counsel intended to be safeguarded by the Sixth Amendment. As a consequence, the court in this case lost jurisdiction and the judgment of conviction is void. *Powell v. Alabama*, 287 U. S. 45, 59, 67, 68; *Johnson v. Zerbst*, 304 U. S. 458, 467-468. Wherever asserted, the fundamental right to assistance of counsel has been held to include the right to such assistance untrammelled and unimpaired by the representation of conflicting or adverse interests. *People v. Bopp*, 279 Ill. 184, 191-192; *People v. Rose*, 348 Ill. 214, 218; see *People v. Rocco*, 209 Cal. 68, 73. Indeed, the necessity for protection of this fundamental right in cases such as this has been recognized by the Solicitor General of the United States. In his motion (p. 6) to dismiss in this Court in *Anderson v. Tread*, 172 U. S. 24, he said:

It is unnecessary for me to emphasize the propriety of Judge Hughes' action in insisting that Anderson,

upon an issue of life or death, should have his own counsel of standing and ability, not embarrassed by employment of any others concerned in the transactions

Obviously, petitioner has here been denied a fundamental right.

VI

THE CONDUCT OF THE TRIAL COURT OPERATED TO DEPRIVE PETITIONER OF A FAIR TRIAL AND OF THE PRESUMPTION OF INNOCENCE

It is well recognized that the right conduct of the trial judge is essential to preservation of the accused's right to a fair trial. In this case, the record is replete with instances of misconduct on the part of the trial judge, so grossly prejudicial to the rights of the petitioner as to make a new trial imperative in order to preserve even the form of a fair trial. A few of these instances should suffice here.

1. *He erroneously admitted highly prejudicial hearsay evidence.*—The court plainly violated the elementary rule against admission of hearsay in admitting in evidence over objection Exhibits 81A (R. 529) and 113 (R. 532). The rule against hearsay evidence has always been applied with particular rigor in criminal cases as an essential part of the right to confront and cross-examine witnesses. *Hopt v. Utah*, 110 U. S. 574, 581; *Donnelly v. United States*, 228 U. S. 243, 273. These were reports by Alcohol Tax Unit agents of their investigations of the so-called *Western Avenue Still* case and of the *Spring Grove Still* case, respectively.

Glasser had presented the *Spring Grove* case to three different grand juries, August 1937, October 1937, and May 1938 (R. 528), obtaining indictments against five out of eight individuals on the last occasion (R. 528-529). The *Western Avenue* case was presented only once with a resultant no-bill (R. 528).

Seeking to impute wrong-doing to Glasser in his failure to obtain indictments in the latter case and against the three remaining defendants in the former case, the government sought to show what the Alcohol Tax Unit had learned from their investigation by attempting to have an investigator testify as to his conclusions from the investigation, rather than as to facts of his investigation, and to testify from hearsay as to facts deemed to show violation (R. 445). The court and prosecuting attorney agreed that the purpose was to show what he (the agent) learned from that investigation (R. 446).

The court permitted the investigator, Campbell, to testify only that he had submitted a report to Glasser (R. 449). However, the investigator was then permitted to identify his report in the *Western Avenue* case, Exhibit 81 (R. 451), and this exhibit was then admitted in evidence over objection (R. 529). A similar report by investigator Sylvan White in the *Spring Grove* case was also admitted over objection (R. 532). McGreal, the assistant prosecutor, then read to the jury this report of investigator Campbell, together with the statements given by various witnesses to Campbell (R. 533). After objections by all, the court ruled that the contents of both reports were competent against Glasser alone (R. 534).

A full appreciation of the effect they must have had on the jury cannot be obtained without examination of these reports. Therefore, these original exhibits have been forwarded and are now on file in the office of the Clerk of this Court.

Exhibit 81A is an elaborate report of 25 pages containing first a "Chronological Narrative History" appearing to state established facts. Following this under the heading "TESTIMONY OF WITNESSES", there are set out at length the statements purportedly made to the agent by each of a large number of witnesses concerning the accused persons.

Exhibit 113 is almost identical in format except that much of the "TESTIMONY OF WITNESSES" is enclosed in quotation marks, thus adding to the prejudicial effect upon the jury. Not to be forgotten is the fact that in each of these reports Kaplan, one of the defendant alleged co-conspirators with petitioner, is referred to as the apparent organizer of the illicit distillery project there involved.

The feeble argument of the government is (Br. in Opp. p. 30):

These reports were of course not offered for the purpose of proving the commission of the liquor violation therein described, but *to show what Glasser had before him* when he acted in these cases.¹⁴ (Italics supplied.)

This can mean any of three things:

(1) That the report was offered to show that a report as to law violation by these defendants had been made to Glasser. But this cannot stand since the fact had already been established by testimony of witnesses and by the evidence that Glasser had presented the cases to grand juries (R. 529-532).

(2) That, irrespective of the truth or falsity of the statements contained therein, such statements had been made. But if the correctness of these statements be not assumed by the jury, then Glasser equally was entitled to treat them as false, and if so, of course they failed to show that anything was before him and were no criteria by which to measure Glasser's conduct.

(3) That all statements contained in the report were substantially true and therefore to be treated as evidence

¹⁴ Even if otherwise available, these reports failed to satisfy even the test stated by the government, since Exhibit 113, a report dated July 1937 (R. 529) related to a case presented to the grand jury May 17, 1938 (R. 528). It is obvious that in that period important witnesses might well disappear or in other ways become unavailable. In fact, that is what happened in this very case (R. 536-537, 532).

available to Glasser, and upon the existence of which Glasser's failure to obtain more indictments was to be appraised. This, of course, was in fact the sole purpose for which they were offered by the government, and the jury was plainly intended to accept them as evidence of the existence of the facts therein stated. Nor was their introduction inadvertent; it was deliberate and purposeful after much verbal maneuvering (R. 446-451), and the reports were submitted to the jury as exhibits to be taken to the jury room with calculated regard to their effect. The record shows that the complete text of Exhibit 81A, together with the statements given by the various witnesses in connection therewith, was read to the jury (R. 533). While Exhibit 113 was not read to the jury, they were told in specific terms where they could find the chronological narrative, the list of witnesses, and the "available" evidence against each defendant involved in the operation of the still (R. 539-540). Indeed, the Government tacitly admits that these reports were submitted as proof of the facts stated therein, by relying on them and in citing to them as follows (Br. in Opp. pp. 6, 9):

Available evidence was not used by Glasser upon these presentations (R. * * * 602).

* * * * *

The record discloses many instances of Glasser's failure to utilize available information and evidence in securing indictments * * * (R. * * * 602, 609).

Thus the government by these record references to the report in the *Spring Grove* case asserts in this case that such reports were "evidence." This attempt to evade the hearsay rule under the appearance of an exception thereto, is a subterfuge probably as old as the rule itself. It is the same evasion which was recently met by the stern refusal of this Court to lend the slightest countenance to a sophism

so plainly at war with preservation of the basic elements of fair trial. *Shepard v. United States*, 290 U. S. 96. There, with language peculiarly applicable to the attempted rationalization of the Circuit Court of Appeals that (R. 1132) :

The information contained in the reports * * *
threw light upon the question

this Court said (p. 104) :

This fact, if fact it was, the government was free to prove, but not by hearsay declarations. It will not do to say that the jury might accept the declarations for any light that they cast upon the existence of a vital urge, and reject them to the extent that they charged the death to someone else.

Applying the holding of the *Shepard* case here, it is plain that it will not do to say that the jury might accept the report and statements contained therein for any "light" that they cast upon the question of whether reports of this law violation had been made to Glasser, and reject them to the extent that they tended to show the evidentiary facts of such violation. *United States v. Perlstein*, 120 F. (2d) 276, 282-283.

As this Court said in the *Shepard* case (p. 104) :

Discrimination so subtle is a feat beyond the compass of ordinary minds. * * * It is for ordinary minds, and not for psychoanalysts, that our rules of evidence are framed. They have their source very often in considerations of administrative convenience, of practical expediency, and not in rules of logic. When the risk of confusion is so great as to upset the balance of advantage, the evidence goes out.

Furthermore, it is well established that in the presentation of evidence before a grand jury it is incumbent upon the prosecuting attorney to see that only competent evidence is introduced. *United States v. Farrington*, 5 Fed. 343, 347 ;

In re Grand Jury, 62 Fed. 840, 846. As was said in *United States v. Kilpatrick*, 16 Fed. 765, 771:

The prosecuting officer is presumed to be familiar with the rules of evidence and it is his duty to take care that no evidence is received by the grand jury which would not be admissible in a court upon the trial of a cause. 1 Whart. Crim. Law, Sec. 493.

Therefore these statements of alleged facts contained in these reports were available as a measure of Glasser's duty only if made by the witnesses themselves—not in mere reports. As said by Mr. Justice Field, in charging a grand jury in California (*Charge to Grand Jury*, 30 Fed. Cas. No. 18,255, at p. 993):

In your investigation you will receive only legal evidence to the exclusion of mere reports, suspicions and hearsay evidence.

All these principles are well established, and applicable here. Yet the government would deprive petitioner of his right of confrontation on the stated ground that the reports showed "what Glasser had before him" (Gov. Br. in Opp., p. 30).

2. *His hostile cross-examination of petitioner and prejudicial remarks deprived the accused of an impartial trial.*—Usurpation of the functions of an advocate appears from the reiteration by the judge of the testimony of the chief clerk of the office of the United States Attorney that, of 20 cases presented to the April, 1937, grand jury, twelve no-bills were returned (R. 196):

The Court: That is the total number of cases presented?

A. By Mr. Glasser.

The Court: To this Grand Jury.

A. Yes, sir.

The Court: And of the twenty there were twelve No Bills?

It is, of course, impossible to reproduce on the printed page the air of disapproval with which this rhetorical question was asked. Either the judge should have well known that there is no norm of true-bill percentage by which to test the honesty of a prosecuting attorney or, if ignorant of that fact, should have forbore such prejudicial comment on the matter. In aggravation, the court refused to allow in evidence the report of this same April, 1937, Grand Jury printed in the record which clearly explains that these no-bills were attributable to failures of the Alcohol Tax Unit (R. 789-795). This report further praised petitioner's work and expressed confidence in his ability, if unhampered, to bring to justice the real heads of the alcohol ring.

In another instance, the court by one sentence deprived petitioner of the benefit of facts highly significant to a vital part of his defense. In connection with the prosecution of Elmer Swanson, Anthony Hodorowicz and Clem Dowiat, upon which the Government heavily relied, the Government had shown a payment of \$500 to Kretske (R. 244) and that subsequently the case against them had been by Glasser stricken from the docket with leave to reinstate (R. 1034, Ex. 226, 236, 238, 317). In explanation Glasser stated that he had stricken the case at the request of Ritter, investigator in charge of agents of the Alcohol Tax Unit; that in a recent conversation with Ritter the latter had recognized that the matter involved no wrongdoing on Glasser's part; and that despite Ritter's then stated belief that the Government was to call him as a witness, he had not been called although he had been in Chicago continually (R. 918-920). After granting the Government's motion to strike the statement that Ritter had been in Chicago ever since (R. 921), the court destroyed the weight of Glasser's testimony with the jury by his highly argumentative statement that (R. 921):

"I will say now to the defendant he [Ritter] is subject to subpoena * * *. You have a right to bring him into this court if you wish."

Such a suggestion, even if made by Government counsel in summation, would have been highly improper because of its reflection upon Glasser's credibility. Coming from the judge, the prejudicial effect on the jury was greatly aggravated. The judge's statement was equally prejudicial in that, in so far as it implied a duty on the part of Glasser to produce such a witness, it deprived him of the benefit of his testimony as a foundation for the presumption that the testimony of the agent Ritter if produced would have been unfavorable to the Government. *Mammoth Oil Co. v. United States*, 275 U. S. 13, 52; *Chicago & N. W. Ry. Co. v. Kelly*, 84 F. (2d) 569, 572; *Kehoe v. Commissioner of Int. Rev.*, 105 F. (2d) 552, 554-555.

3. *He made statements as of fact not shown by the evidence.*—Glasser, on direct examination rebutting earlier testimony, narrated his efforts to obtain testimony from a convict against one Abosketes by securing commutation of sentence for the convict and others (R. 936-941), all of whom had been prosecuted by him and given substantial sentences (R. 939).

During this examination of petitioner, without any previous reference having been made thereto, the judge assumed the role of witness in an effort to relate Abosketes to the alleged participation of Glasser in the putative conspiracy. The court interrupted to ask (R. 941):

Q. Did you know at the time that Nick Abosketes was under indictment in the Eastern and Western Districts of Wisconsin?

A. No, sir.

Q. Did you make any inquiry?

A. No, sir. You see my job was strictly prosecuting.

Q. You were interested in getting Nick Abosketes?

A. Yes, sir.

The Court: Alright. Go ahead.

The effect of these statements was to impress upon the mind of the jury that Glasser was in some way related

to a transaction between one Brantman and Kretske as to which the Government had earlier offered evidence. This showed only that Brantman, on behalf of Abosketes, had paid \$3,000.00 to Kretske and that Abosketes had not been indicted in Illinois (R. 647-649, 650-662, 664-673; see Gov't Br. in Opp., p. 33, note 25).

Later, again without relevance to the matter being pursued on direct examination, the judge interrupted to testify (R. 943):

I think my impression was there were two indictments pending in Wisconsin against Nick Abosketes on February 25, 1938.

Later, again without relevance to the matter then being discussed, the judge reverted to the Abosketes matter (R. 1030):

At my request the Government has furnished me with this. Let the record show that Nick Abosketes was indicted in the Western District of Wisconsin on January 27, 1936; and that he was indicted in the Western District of Wisconsin July 20, 1938.

He then continued (R. 1030):

To the indictment in the Western District he plead guilty and was sentenced. • • • After that the indictment in the Eastern District was dismissed. It covered the same subject matter, I know that for a fact.

It thus appears that the court not only took the part of an advocate in cross-examination of Glasser but also undertook positively to testify as to facts not otherwise in the record. Even that was erroneous since his question (R. 941) stated that two indictments were pending against Abosketes on February 25, 1938 (R. 941), whereas the report furnished by the Government showed that the second was not returned until six months later (R. 1030).

The prejudicial effect of this conduct of the court in forcing upon the jury, by his own reiterated statements, the impression that Glasser in some way was connected with law violations by Abosketes was plainly beyond the ambit of permissible conduct by the trial judge. The impropriety of testimony by a judge of facts as to his own knowledge, subject as it usually is to no cross-examination, or other means of testing its verity (*Quercia v. United States*, 289 U. S. 466, 470; *Terrell v. United States*, 6 F. (2d) 498, 499) was aggravated in this case by the fact that the erroneous statement was used as the basis of an obviously prejudicial question addressed to Glasser by the court (R. 1022). There, referring to the efforts about February 25, 1938, of the District Attorney's office to obtain commutation of sentence in exchange for information from convicts, the court said (R. 1022):

Q. Just a minute, on that point. Was it your solemn judgment that the cause of good government would be best promoted by turning these twelve defendants loose who had been convicted and in exchange have their testimony to convict Abosketas.

A. Yes, sir. It was the judgment of myself, Judge Igoe and Mr. Herrick.

Q. To turn twelve defendants loose on the streets who had been convicted of operating or involved in the operation of some still with Abesketes, in exchange for their testimony which might convict Abesketes, when Abesketes was at that time under indictment in the Eastern District of Wisconsin; is that your solemn judgment?

This obvious display of adverse criticism of Glasser by the court was based upon facts twice stated and testified to by the court as of his own knowledge.

The fixed purpose of the judge to keep the name of Abosketes before the jury and to give added weight to the

evidence concerning Abosketes is shown by his statement, the last made before the defendants rested (R. 1030):

I happen to know something about Nick Abosketas.

4. *His repeated acts of advocacy were a clear abuse of his prerogatives as a trial judge.*—The leading case on the subject, *Adler v. United States*, 182 Fed. 464 (C. C. A. 5), states the applicable rule as follows (p. 472):

The impartiality of the judge—his avoidance of the appearance of becoming the advocate of either one side or the other of the pending controversy which is required by the conflict of the evidence to be finally submitted to the jury—is a fundamental and essential rule of especial importance in criminal cases.

This rule was repeatedly violated here.

Attempt to nullify testimony of witness.—Gross abuse of his position by the judge appears in the course of examination of petitioner's witness, District Judge Igoe. Earlier, an imputation of breach of duty had been attempted by testimony of Alcohol Tax Unit Agent Bailey that petitioner had failed to prosecute on a conspiracy count a large number of defendants named in the agent's report and had prosecuted only four on substantive counts (R. 708-709). To refute any inference of corruption, petitioner sought to show by Judge Igoe (who had at the time been his superior) that his action had been duly approved after review of the agent's report (R. 891, 902). The objectionable conduct of the court appears from the following (R. 901-903):

Mr. Stewart: Yes. Isn't it a fact, Judge, that you studied that long report, calling your attention to this particular report here (indicating).

The Court: He had undoubtedly hundreds of reports to look at.

Mr. Stewart: Q. The particular report you have in your hand, I will give it the Exhibit number so there

won't be any mistake about it. Number 160, wherein Mr. Bailey, special investigator—

The Witness: A. I assume that report contains a detailed statement of what evidence would be submitted which would involve the Hodorowicz brothers.

Mr. Stewart: That is right. Now I will ask you first, was it not your first instruction to your assistant, Mr. Glasser—

The Court: Just a minute, Mr. Stewart, I am, suggesting this, it was my impression the testimony that Mr. Bailey submitted this report to Mr. Glasser after he had completed this investigation which was some time after Mr. Glasser and Mr. Bailey had consulted with Judge Igoe.

Mr. Ward: That is my understanding.

The Court: That is why I thought the Judge ought to have a chance to study this particular report to see when it was submitted.

Mr. Stewart: My understanding of that, your Honor, is, Mr. Bailey came here from Washington.

The Court: Just a minute. Let me ask Mr. Bailey.

Mr. Bailey, you have already testified that you visited Judge Igoe who was then District Attorney with Mr. Glasser, with reference to the Hodorowicz brothers?

Mr. Bailey: Yes, sir.

The Court: At that time did you have this report that we have marked Exhibit 160? Did you have this report marked Exhibit 160 with you and did you submit it to Judge Igoe?

Mr. Bailey: I did not, sir.

The Court: That is my impression, there is some other report and Judge Igoe must have seen, I don't think it is fair to the Judge to confine him to this particular question of this Exhibit until he has a chance to examine it because my impression was Mr. Bailey had not completed his investigation at the time they called upon Judge Igoe and Judge Igoe said "Go out and complete your investigation", and then "Mr. Glasser, I want to hear further from you, and submit this to the Jury."

Mr. Stewart: That is not my memory of the testimony.

The Court: What is your recollection? Just a minute.

Mr. Bailey: Your Honor, I talked to him but on one occasion in my life, and that was on the 26th of January, 1938; at that time that report was not completed. I had no report with me on that occasion.

The Court: That is Exhibit 160.

Mr. Bailey: That is correct. I turned that report over in Mr. Glasser's office on April 21, 1938.

The Court: That is what I thought; that is what made me confused as to the report.

Thus the judge, after first gratuitously casting doubt on Judge Igoe's ability to recall the report handed to him, proceeded to interrupt the examination to refute his testimony by the judge's own statement of what purported to be a reiteration of the earlier testimony adduced from Agent Bailey (R. 708). The crucial point here, of course, was whether Judge Igoe had seen the report before directing petitioner to present the violations as substantive crimes. Yet, under the guise of solicitude for Judge Igoe, the court obfuscated the real issue, confirmed for the jury the credibility of the Government's witness, twice reiterated his impression of the earlier testimony as proving that Judge Igoe had never seen this report, indicated that Judge Igoe was mistaken in his testimony and effectually deprived petitioner of its benefit. In accomplishing this result he also interrupted the witness to examine agent Bailey who was seated at the prosecutor's table. It helped Glasser very little that his witness was finally able to testify that he had seen the report and had directed petitioner's actions (R. 903).

Wilful misrepresentation as to duty of petitioner.—By adroit questioning of witnesses with respect to the Stony Island still proceeding (*United States v. Anthony Hodorowicz, Clem Dowiat, & Elmer Swanson*, R. 231, 227, 232-233,

272) the judge caused the jury to obtain an entirely erroneous impression as to the effect of the evidence. In this case, the defendants (witnesses here) had been called before the court one time only—after indictment they were arraigned before Judge Woodward for the purpose of taking their pleas (R. 231-232, 235, 835-836); thereafter, because the Alcohol Tax Unit agents had been unable to obtain sufficient evidence, this case was stricken from the docket with leave to reinstate (R. 920, 1034, Ex. 226, 236, 238, 317). The docket of the United States Attorney shows that as late as the date of trial, February 6, 1940 (R. 97), approximately ten months after Glasser left office, April 15, 1939 (R. 912), the Government had not yet seen fit to reinstate the cause (Ex. 226, introduced at R. 1034).

Despite the fact that the status of the case had thus been clearly established, and despite the fact that the prosecuting attorney had stated that the court appearance of these defendants before Judge Woodward was only for arraignment (R. 231), the judge violently distorted the effect of this evidence by asking one of the defendants (Anthony Hodorowicz) the question (R. 346):

You were never convicted, never paid a fine and never went to jail?

In examining another witness accused in the same pending indictment, the court asked (R. 232):

The case just dropped out of mid-air?

Since the effect of the striking with leave to reinstate was to leave the indictment still pending (R. 920), the witnesses in each case gave the indicated answer. The consequent inference by the jury that Glasser had by some legerdemain permanently prevented prosecution of this charge was well nigh irresistible.

Further examining one of the same witnesses (Anthony Hodorowicz) the court plainly misled the jury on this same

matter to the great prejudice of petitioner. There is, of course, no presentation of evidence upon a mere arraignment. Yet, despite the plain state of the record showing the proceeding in issue was an arraignment only for the purpose of taking pleas after indictment (R. 231-232) and that the case was still pending, having been merely stricken from the docket with leave to reinstate (R. 236, 238, 317), the trial court persisted in treating an arraignment as though it should have been a trial (R. 347-348):

The Court: Were the facts brought out before the Judge in your presence, so that the Judge knew the facts?

A. No.

.

Q. Was there a full disclosure of facts made before Judge Woodward, as to your connection in that case?

A. No, not that I heard of. I was sitting at the bench.

Q. Were you called before the Judge at any time?

A. Just to mention our names, to be present.

Q. The Judge did not ask you any questions?

A. No.

Q. The lawyer didn't ask you any questions in front of the Judge?

A. No.

Q. Did Mr. Glasser ask you anything in front of the Judge?

A. No.

Q. So you don't know,—your recollection is that there was not a complete disclosure of all the facts that connect you with that case, before the Judge?

No more obvious or calculated attempt by a judge to condemn a defendant in the eyes of the jury could well be imagined. Had the court instructed the jury that failure to disclose all facts on an arraignment was breach of duty on the part of petitioner, it could be made the basis of an

assignment of error. But what protection has he against innuendoes such as these?

Hostile questioning of petitioner.—A shocking disregard of his duty to preserve an impartial attitude well exemplifying the hostile atmosphere in which this case was tried is portrayed in the cross-examination by the judge of Glasser with regard to the libel case against *One Chrysler Sedan* owned by Rose Vitale, wife of Leo Vitale (R. 222). This will be plain when the circumstances are understood. The Government had earlier sought to make it appear that Glasser had suppressed evidence contained in a report as to this car furnished by the Alcohol Tax Unit (R. 218-224).¹⁵ Judge Barnes, before whom the case was tried, testified on Glasser's behalf that the report was read to him; that he knew that the car was owned by the wife of a bootlegger; that the case was tried on this statement because it contained what the agent expected to prove (R. 717-718); and that this statement clearly required the return of the car (R. 718). The prosecuting attorney, on cross-examination, by questions implied that in another report concerning a criminal case, in which Leo Vitale had been no-billed, there were statements that a Chrysler car was found on the premises of the Vitale home (R. 1000).¹⁶ When Glasser stated that in presentation of the libel case

¹⁵ It is to be noted that the testimony of the Alcohol Tax Unit Agent, Dowd, that he had seen this car used in violation of the liquor laws (R. 219) and that such evidence was in his report (R. 224) is completely misleading and is refuted by examination of the report read to Judge Barnes in this case, Ex. No. 36 (see R. 224, 717), which was a report not made by Dowd but by one Barratt O'Hara, Jr. This exhibit, No. 36, on file in this Court, found in an envelope marked Ex. No. 229 (see R. 1100), is attached to a letter from Yellowley to the United States Attorney stating that it is "in regard to the merits of the claim of Rose Vitale." This report contains not the slightest mention of evidence of use of the car in law violation.

¹⁶ This, of course, was merely cumulative of the statement in the agent's report in the civil libel suit as to the place in which the car was seized (R. 717, Ex. No. 36).

he did not mention Leo Vitale, the judge embarked on a course of cross-examination calculated plainly to convey to the jury his hostile attitude toward petitioner (R. 1000-1002). Aside from distorting the petitioner's answers (R. 1000-1001), the court restated the earlier testimony of agent Dowd, thus indicating to the jury the judge's acceptance of it as true.

Hypothetical question without foundation in the record.

—Finally, the court went so far as to engage in the glaring, and we submit inexcusable error, of asking Glasser a hypothetical question based on facts utterly without foundation in the record (R. 1001-1002).¹⁷ Despite its unfounded character, Glasser could not but answer in the affirmative that the facts thus assumed would be good evidence that the automobile was being used to defraud the United States (R. 1002).¹⁸ The purpose of the question clearly was to keep before the jury the assumption of damaging evidence which could not be proved and thus to impress upon their minds the existence of assumed and non-existent facts. To say that such a course would not be prejudicial to petitioner

¹⁷ The hypothetical question was: "Isn't it a fact, Mr. Glasser, if an automobile is found on the premises where there is also found an unregistered still, that if it is found within the enclosure, and you have got evidence which can establish that the particular automobile found within the enclosure of the unregistered still, was on numerous occasions followed by the Alcohol Tax Unit, and observed and seen cans of alcohol being placed in it, and license number changed on it, and traced to the premises where the still is actually found, do you consider that fairly good evidence that the automobile was being used to defraud the United States Government out of the taxes on alcohol?"

¹⁸ Petitioner has noted carefully the testimony of agent Dowd (R. 219) concerning alleged use of this car to haul sugar, bootleggers and to trail carloads of alcohol. Aside from the fact that such conclusions by an agent would be inadequate evidence for forfeiture, it is plain that neither this testimony nor any other part of the record supports the hypothetical facts assumed by the court.

is to ignore human experience and the dictates of common sense.

While the court and the prosecuting attorney made reference to a criminal file and by their questions attempted to imply that it contained the facts assumed by the judge (R. 1002), it is highly significant that this criminal file was neither marked for identification nor offered in evidence. This plain breach of an elemental rule of evidence not by an advocate but by the presumably impartial judge is, we submit, inexcusable. Certainly, no one could reasonably contend that it is not prejudicial.

This same cross-examination by the court was also in clear violation of the well-recognized rule that, whatever the defendant's position, the court's right to examine the witness stops short of any questioning which might in any way hamper the defendant in the presentation of the theory of his defense.

VII

THE IMPROPER CONDUCT OF THE PROSECUTING ATTORNEY CLEARLY VIOLATED THE RIGHT OF PETITIONER TO A FAIR AND IMPARTIAL TRIAL AND IMPAIRED HIS STATUTORY RIGHT OF APPEAL

That there is a burden upon the United States Attorney as a quasi-judicial officer to aid and maintain the proper judicial atmosphere and, in doing so to prosecute the defendant solely on the facts of the case by legitimate methods, is well recognized. Improper questions, statements not based upon evidence, and browbeating of witnesses is forbidden. All these are prohibited because they tend to distract the minds of the jurors from the actual facts and real issues and create against the defendant a prejudice born of the fact that the district attorney is recognized as a public officer, who has apparently no personal interest in the case and who is interested solely in obtaining justice.

A few of the multitude of instances of misconduct by the prosecuting attorney which destroyed all semblance of a fair trial in this case may be briefly set forth:

1. *During the trial the prosecuting attorney wrongfully deprived petitioner of access to exhibits admitted in evidence.*—During the cross-examination of the petitioner, he was questioned as to some of the thousands of cases handled by him. The files relating thereto had already been put in evidence by the government. Without authorization by the court, these exhibits were kept in the possession of the prosecutor who, although ordered to show them to petitioner during a week-end recess, refused to do so on the frivolous ground that petitioner was not accompanied by his attorney (R. 980, 982-983).

In the first place the ordinary safeguarding of the interests of parties litigant requires that exhibits once submitted in evidence be retained in the possession of the clerk of the court.¹⁹ In any event it is clear that a defendant has an unqualified right to examine such exhibits. Here the denial of such right to petitioner forced him to state in truth, but with naturally prejudicial effect on the jury, that he did not remember the various cases referred to by the prosecuting attorney (*e. g.* R. 957-964, 967, 969, 971-972).

2. *The prosecutor removed from the office of the Clerk and lost exhibits deposited with the Clerk forming part of the record in this case.*—The violation of the requirement that the record be retained in the hands of the Clerk also culminated here in the consequences which the rule seeks to prevent. The exhibits were taken by the Government from the courtroom on the day the verdict was returned,

¹⁹ Rule 16 of the District Court for the Northern District of Illinois provides: "After being marked for identification, models, diagrams, exhibits and material forming part of the evidence in any cause pending or tried in this court, shall be placed in the custody of the clerk unless otherwise ordered by the court."

March 8, 1940, and retained almost five months until demanded by the Clerk of the Circuit Court of Appeals on July 31, 1940 (R. 1094, 1096). Although the Government first stated that all the exhibits admitted in evidence at the trial had been transmitted to the Clerk of the Circuit Court of Appeals (R. 1096), petitioner showed, and the Government finally admitted, that certain exhibits (Nos. 198, 205, 206 and 208) were missing (R. 1098, 1100). The Government sought to avoid responsibility for loss of these exhibits by the naked assertion of the prosecutor that they had never been in his possession (R. 1100, Gov't Br. in Opp. 38, note 30).

The following analysis of the record shows, however, that the Government had possession of the exhibits in this case from the date the verdict was returned, March 8, 1940, until July 31, 1940. The petition of the defendants for production of missing exhibits (R. 1094-1095) alleged that, until the latter date, "no exhibits had been forwarded to the Clerk" of the Circuit Court of Appeals and that on that date the Clerk of the District Court, upon demand of the Clerk of the Circuit Court of Appeals therefor, merely referred him to the Assistant United States Attorney; that on the same date certain exhibits were by the United States Attorney delivered to the Clerk of the District Court and on August 2, 1940, by him certified to the Clerk of the Circuit Court of Appeals (R. 1095).²⁰ The answer of the United States Attorney (R. 1096) admitted all of these allegations and affirmatively stated—

all of the exhibits in the trial of the case [with an exception not here pertinent] are in the possession of the Clerk of the Circuit Court of Appeals.

²⁰ Indeed, the certificate of the Clerk of the District Court embodies a receipt to the United States Attorney and shows that transmission and certification was confined to the exhibits received from the United States Attorney (R. 1075).

But when further pressed for the production of seven exhibits omitted from the certification by the Clerk, including Exhibits 205 and 206 (R. 1098), the United States Attorney asserted merely that these were defendants' exhibits and had never come into his possession (R. 1100). It is pertinent to note that all of petitioner's other exhibits were received by the United States Attorney at the close of the trial and were subsequently by him delivered to the Clerk of the District Court. See Glasser's Exhibits No. 197, R. 912; No. 199, R. 913; No. 202, R. 921; No. 203, R. 922; No. 204, R. 948; No. 207, R. 953, all shown by the Clerk's certificate to have been received from the United States Attorney (R. 1075, 1088). Finally, the admission of the United States Attorney that he had asked Glasser for "copies of certain exhibits" (R. 1095-1096) tends to confirm that he had earlier discovered his loss of the originals of these exhibits. The United States Attorney took these exhibits from the custody of the Clerk with the consent of only one defendant, and in any event cannot be permitted to dodge responsibility with mere denial of receipt.

Two of these missing exhibits, Nos. 205 and 206, were vital to petitioner's cause in the Circuit Court of Appeals and are just as vital in this Court. They were periodic reports of petitioner to his superiors, made contemporaneously with the disposition of the cases here complained of by the government and showing in each case the reason for and manner of their disposition (R. 952). The Circuit Court of Appeals had no opportunity to read these exhibits before entering its findings in this case. Petitioner was thus deprived of the substance of his right of appeal.

3. After trial, the prosecutor, McGreal, unlawfully mutilated exhibits constituting a part of the record in this case. Examination of the original exhibits in this case made by counsel after their transmission to this Court has led

to the discovery for the first time that Francis McGreal, an assistant United States attorney, who took an active part in the trial of this case (R. 186), after the trial and before the hearing in the Circuit Court of Appeals unlawfully mutilated such exhibits. The mutilation was by adding to these exhibits writings whose content must necessarily have been highly prejudicial to the petitioner on appeal.

Exhibit/No. 130 is a file envelope in the case of *United States v. Louis Kaplan, Edward R. Dewes, Victor Raubunas, Joseph F. Cole, Louis Pregenzer, Lincoln Rankin and Ralph Bogush*, D. C. 31591 (R. 1083). Examination of this file envelope shows on its face the following endorsement:

4-30-1940—Caplan—Pleads Guilty—14 Months to run
Concurrently with 31825—Stay Execution 30 days Mo.
of Gov. Dewes & Rabunas S. O. L.

This endorsement is signed F. J. McGreal. It and additional endorsements which appear immediately under it, bearing dates May 28, 1940 and June 3, 1940, also signed by McGreal show the disposition of cases against the other accused persons "Cole, Pregenzer, Rankin and Bogush". As a result, the District Court Clerk's "Certificate to Exhibits" describes this exhibit as "bearing notations as to sentencing of defendants" (R. 1083).

Post-trial addition of evidence by the Federal prosecutor, McGreal, is plain.²¹ The dates of these endorsements show conclusively that they were made long after the return of the verdict in petitioner's trial, March 8, 1940 (R. 101).

²¹ R. S. § 5403, 18 U. S. C. § 234 provides: "Whoever shall wilfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy . . . any record . . . paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000, or imprisoned not more than three years, or both."

Hence, they could not have appeared on the exhibit at the time of the trial. The dates of the endorsements also show that they were made during the period in which the office of the United States attorney had possession of the exhibits in the case, *i. e.*, from March 8, 1940, to July 31, 1940 (R. 1094-1095).

Calculated purpose on the part of McGreal to thus prejudice Glasser's appeal and the reason for his choice of means are both apparent. At the time Glasser was sentenced the court said (R. 1064):

* * * You withheld testimony from that grand jury that resulted in the indictment of these men that were later indicted and were convicted.

This statement, being untrue and without support in the record, caused Glasser to answer (R. 1064):

Nobody was ever indicted and convicted that I no-billed.

This highly significant fact, of course, was of the greatest importance both in the trial court and in the Circuit Court of Appeals and in this Court. McGreal who was present, and ready to make corrections (R. 1065), stood silent.

But thereafter McGreal undertook to remedy this flaw. Kaplan, Raubunas and Dewes, who had been no-billed upon Glasser's presentation of the so-called *Spring Grove* case (R. 528), were at the time of the sentence of Glasser under indictment returned on a presentation made after Glasser left office, but had not yet been tried.²²

After conviction and sentence of Kaplan in the instant case as a co-conspirator of Glasser, McGreal was able with

²² The indictment earlier obtained by Glasser against the other five men referred to in McGreal's addition to Exhibit 130 was shown by Exhibit 129. This exhibit also bears a pencilled endorsement by McGreal also dated after the close of the trial showing dismissal of this earlier indictment. It merely completes the narration as to their reindictment which is shown by Exhibit 130.

ease, in view of the testimony of Dewes (R. 537-556) and Raubunas (R. 452-527) at the trial of the instant case, to obtain Kaplan's plea of guilty, sentence thereon to be served concurrently with that imposed in the *Glasser* case.²³

4. *Prosecutor Ward, by his leading questions, assumed the role of a witness.*—The prosecuting attorney was forced frequently to resort to the most obvious sort of leading questions to put into the mouths of witnesses testimony which would in some way involve a mention of petitioner's name. He persisted in assuming that witnesses had said things not said, and persistently examining them upon those assumptions. An example occurs in the direct examination of one Swanson, then subject to an alcohol violation indictment in Cleveland as well as another in Chicago.²⁴ Unsuccessful in his attempt to have the witness mention petitioner's name either directly or indirectly in relation to conversations had with third persons, the prosecutor by asking the following leading question in effect became a witness (R. 230):²⁵

Q. And Dan was to get part of the money that was given him?

²³ See Exhibit 130. But as to the other two (Raubunas and Dewes), no-billed on Glasser's presentation, but indicted on a new presentation after Glasser had left office, the endorsement on Exhibit 130 indicates that McGreal struck the case with leave to reinstate as is indicated by the endorsement after their names: "S. O. L." (The reason for this curious failure of McGreal to prosecute these men who, by their own testimony in the Glasser case, were guilty of law violation with Kaplan in the Spring Grove case (See R. 499, 550) is conjectural. It may be noted, however, that the continuing existence of this indictment—the case merely being stricken with leave to reinstate—plus their recorded testimony in the Glasser case would be a Damoclean deterrent should they at any time be inclined to retract their testimony against Glasser in this case).

²⁴ Note the admission of this witness "I would rather commit a little perjury than go to the penitentiary" (R. 235).

²⁵ The attorney for defendant had just objected to the same sort of questioning by the prosecutor without being able to obtain a ruling on his objection (R. 229). The objection was clear and counsel by continuing objections would only have made the question more prejudicial by thus continually calling them to the attention of the jury.

A. Well, I don't know if he said Dan or Red, or something like that, either one.

The sworn witness having been thus instructed, Ward continued (R. 230):

Q. Either what?

A. Either one, Red or Dan.

Q. Didn't you know at that time who Kretske was referring to as Red?

A. Yes.

Q. Who?

A. Well, it was Glasser.

Standing alone, this leading question, while unquestionably error, might not be deemed reversible error. As a matter of fact, however, this testimony by the prosecuting attorney under the guise of a question was the only "evidence" which tended in any way to connect Glasser with the alleged "fixing" of this so-called *Stony Island or 69th Street Still* case (R. 229), as to which there was much testimony and as to which the judge led the jury to believe Glasser guilty of misconduct.²⁶ Other than Government Agent Bailey, whose testimony tended to show no misconduct by Glasser (R. 706-711), the Government produced as to this case five witnesses, the first three of whom had been indicted for operation of this still (R. 231):²⁷

(1) Swanson, who testified to the payment of money to Kretske (R. 229-231) but implicated Glasser only upon the leading question under discussion;

²⁶ See the prejudicial and utterly unfounded intimation to the jury by the judge that Glasser in this *Stony Island still* case was guilty of misconduct in failing to have obtained convictions, fines, or imprisonment and in failing to present evidence at an arraignment although this case had been merely stricken from the docket with leave to reinstate at the request of an Alcohol Tax Unit agent, because of lack of available evidence. *Supra*, pp. 49-51.

²⁷ It will be recalled that this case was stricken from the docket with leave to reinstate at the request of the agent in charge of the Alcohol Tax Unit investigators (R. 918-921).

(2) Clem Dowiat, whose testimony showed no mention of payment to Kretske or mention of Glasser (R. 268-277);

(3) Anthony Hodorowicz, whose testimony (R. 342-354) showed merely that the defendants had employed Kretske as a lawyer (R. 344-345, 347) and included no mention of Glasser;

(4) Christ Del Rocco, who testified that he was present at two meetings with Kretske, one in Frank Hodorowicz's store and the other in Kretske's office, at the second of which \$500.00 was alleged to have been paid Kretske (R. 244);²⁸ none of this testimony as to the alleged "fix" in this case shows any reference to Glasser (R. 242-248);

(5) Frank Hodorowicz, whose testimony as to this case shows he paid \$500.00 to Kretske "to take care of the case" (R. 297-298), but fails to show any mention of Glasser.

It is thus apparent that all of the voluminous testimony failed utterly to show any relationship to Glasser. The only showing of payment of money to, or other relation of, Glasser, therefore, was the testimony of the prosecuting attorney in his leading question (R. 230):

And Dan was to get part of the money that was given him [Kretske].

Thus the adverse commentary questions of the court—that this case "dropped out of midair" after the arraignment in this case (R. 232) and that no convictions or fines resulted (R. 346) and that there was insufficient disclosure of the facts (R. 348)—had prejudicial effect²⁹ as to Glasser only by reason of this testimony of prosecutor Ward.

²⁸ It should be noted that the testimony of this witness at R. 243 is with regard to payment of money to Horton in connection with the seizure of a different still—located on 119th Street.

²⁹ See, *supra*, p. 49-51.

This example well demonstrates the tremendously prejudicial effect which may lurk in a single testimonial question by a prosecutor.

The recurring and persistent practice on the part of the prosecuting attorney in causing witnesses by leading and suggestive questions to give testimony of the type deemed favorable to the Government's cause is well exemplified at pages 229, 244-245, 289, 296, 301, 303-306, 380, 573, 612-613, 636, 659-660, 703 of the record.

5. *The prosecuting attorney read to the jury only part of the testimony of a witness before the grand jury, deliberately leaving the jury to infer, contrary to fact, that this was the only testimony given by the witness.*—In support of its contention that petitioner had corruptly caused the grand jury to no-bill a case against co-defendant Kaplan, the Government attempted to show that a principal witness, one Cole, was not properly examined as to his knowledge. The prosecutor asked and secured "leave at this time to read his [Cole's] testimony before the May, 1938, grand jury," Exhibit 96 (R. 574). The testimony by Cole therein contained and read by the prosecutor relates exclusively to his illness.

This mode of identification by the prosecutor³⁰ was plainly calculated to indicate to the jury with obvious prejudice to Glasser that the Exhibit from which he read contained all of Cole's testimony.

Examination of this exhibit shows in the first place that it purports only to be the testimony taken at a grand jury session at 2 P. M. on Tuesday, May 17, 1938. In the second place, the testimony of Cole therein contained and read to

³⁰ Morgan, the chief clerk in the office of the United States Attorney (R. 186) had earlier identified Exhibit 96 as "the transcript of testimony taken before the grand jury on May 17, 1938 (R. 529). But the exhibit was never properly authenticated by a witness, subject to cross-examination as to its accuracy or completeness.

this jury by Ward is confined to facts as to his illness. It contains not an iota of testimony as to law violation by any person.

The record conclusively shows (1) that he was examined at least twice before the grand jury and (2) that he did testify as to the merits of the case. Cole himself testified (R. 576):

I came down here before the grand jury and I was asked questions which brought up about Kaplan and different things, and I told them all I know about it.

The foreman of the May, 1938, grand jury, Gates, testified (R. 606):

I know that some of the jurors wanted to get Mr. Cole back, they thought he knew more than he told us. That was what they assumed. * * * At the time we wanted to call Mr. Cole back was at a time when Mr. Cole was before us twice at that same session.

And (R. 607-608):

I examined him [Cole] concerning whatever knowledge he may have concerning that still. After I did that and he went out of the room some of us were dissatisfied with the way he answered his questions. * * * We requested Mr. Glasser to have him brought back in, and he was brought in. And then some more questions were asked him about the still, or whatever knowledge he might have on it.

The Government has asserted (Br. in Opp., p. 39):

But there is much in the record to indicate that Cole did not testify concerning the merits of the case under investigation (R. 531, 590, 606, 925).

We beg the indulgence of the Court in considering these citations at length. We do so, first because they clearly fail to support the Government's statement and, more important, because they forcefully demonstrate that this Court

can decide this case only by direct reference to the record.

The first is the statement of Investigator White (R. 531):

At this time two or three witnesses were called. Joe Cole was called as a witness this time but was only in the Grand Jury room for a period of about two minutes.

Since Exhibit 96 shows ten witnesses Investigator White plainly refers to an appearance by Cole before the grand jury at a time other than that shown in Exhibit No. 96, it thus appears from this testimony that Cole was brought before the grand jury at least twice.

The second Government citation apparently is to testimony of Ellis, Secretary of the May, 1938, grand jury (R. 590):

Well, before Mr. Cole was brought in we were informed that his testimony really didn't have to be considered because the information, most of it, was relative to Mr. Cole's illness and certain conditions which led us to believe that he perhaps—well, you might say was not mentally all there. When the question was brought up—when Mr. Cole was being examined by Mr. Glasser he asked him practically only questions relative to his physical condition when he was in the hospital, and so forth.

The witness obviously testified only as to the appearance of Cole which is covered by Exhibit No. 96. As this witness does not deny, and as we have shown that in fact there were other appearances by Cole, this testimony utterly fails to support the Government's statement: "But there is much in the record to indicate that Cole did not testify concerning the merits of the case under investigation."

The next citation of the Government is to R. 606, the testimony of the grand jury foreman Gates, set out immediately above, who expressly stated that Cole was twice questioned about the still (R. 606-608).

The final citation is to Glasser's statement (R. 925) as to why he examined Cole only as to his physical condition the last time he brought him before the grand jury.

The record clearly demonstrates that the prosecuting attorney wilfully read but a small and irrelevant portion of Cole's testimony before the grand jury and by submitting it to the jury in the form of an exhibit intended to leave with them the lasting impression—in disregard of the easily forgotten oral testimony—that Glasser made no attempt to obtain incriminating evidence from Cole.

6. The prosecutor persisted in the putting of specious questions, the plain purpose and effect of which were to impress on the minds of the jury the probability of the existence of the assumed and damaging facts on which the question was based although they were not and could not be proved.—In questioning William Workman, who had been indicted for liquor violation in June, 1935 (R. 193) and who pleaded guilty and was placed on probation (R. 202, 203, 209), prosecutor Ward insinuated that Glasser was guilty of a breach of duty by asking, over objection, whether Glasser had subsequently called him into his office to talk about the case. The court approved the question (R. 209). This innuendo that Glasser sustained any such duty to call in a prisoner on probation was a vicious and utterly unfounded attempt to impress the jury with the existence of wrong-doing by Glasser.

In another instance, United States Commissioner Walker testified that in a case in which Glasser represented the Government he discharged a prisoner, one Kwiatowski, for lack of probable cause (R. 289). The Government's own evidence shows that all available evidence had there been presented (R. 397-399). Yet the prosecutor persisted in asking the Commissioner (R. 289):

It does not mean that there may not be probable cause but that it was not shown to you.

He, of course, received the appropriate answer. The prosecutor could have had but one purpose and the question could have had but one effect—to lead the jury to believe, without any basis, that there was other evidence available to and suppressed by Glasser.

Again, Federal District Judge Woodward, having testified that he had never observed conduct by Glasser contrary to his conscientious duty (R. 738), the assistant prosecutor, joining in the practice of mean insinuation, asked (R. 739):

Judge, all that you have testified to here was to facts that occurred in your court room?

.

You have no information as to what occurred outside of your court ?

And again, he pursued the same objectionable course by asking Judge Woodward as to the trial of a case conducted by Glasser (R. 737, 741):

You had no information other than that given to you by the United States Attorney in charge of that case.

.

And what you heard in the court room, that was presented by him.

.

And that is all the information you had at that time?

The trial in that case had ended in a conviction but even so the prosecution could not abate its fixed policy of damning Glasser by utterly unfounded insinuation that he had suppressed evidence.

Typical again of the practice of prosecutor Ward is his assumption of the role of an unsworn witness to testify to facts not otherwise in evidence. In the cross-examination

of Judge Igoe, after referring (R. 907) to H. L. Welch, indictment against whom was dismissed for want of prosecution (R. 195), and Swanson and Dowiat whose case had been by Glasser stricken from the docket with leave to reinstate (R. 274, 231, 236, 238), the prosecutor made the flat statement (R. 908):

That is the point. I say you don't know them, but Mr. Glasser does know them.

Thoroughly confirmed in his purpose to testify as a witness, the prosecutor then embarked on the following cross-examination (R. 909):

Q. Now, the Workman case, you didn't know that Daniel Glasser knew a man named Sheenie Albert, did you, Judge?

A. No, sir. I don't know it now.

Q. And you didn't know that he ever visited 1062 Polk Street, and tooted his horn, and a man came out of that place, and who was in that Workman case and held a conversation with him, you didn't know anything about that, did you?

Mr. Stewart: I object to that, Your Honor, that never happened.

The Court: There is testimony here in the record to that effect.

Here the prosecuting attorney abandoned all pretense and by these bold assertions sought to supply evidence which he had previously sought and failed to obtain. Plainly inadmissible testimony of Government witness Svec from which the jury might have been urged to imply Glasser's friendship with Albert (R. 563) had been stricken (R. 569). Agent McFarland had testified to an answer by Svec in an office interview with Glasser admitting he had never seen Glasser with Albert (R. 584) and Svec had testified that in so admitting he was there answering Glasser truthfully (R. 566).

In no way disheartened, however, Ward not only thus proceeded himself to testify to these things as facts but obtained the equally reprehensible corroboration of the judge who stated (R. 909) :

There is testimony here in this record to that effect. All this, despite the utter lack of any testimony to support such statements.

Citation of authorities to show the uniform disapproval of such conduct by a United States Attorney would be superfluous in view of this court's recent and thorough discussion of the conduct required of prosecuting officers in the trial of accused persons. *Berger v. United States*, 295 U. S. 78, 88-89. The public interest in the fair and impartial conduct of criminal trials and that verdicts of juries be rendered only on proofs submitted pursuant to the well-established rules of evidence imperatively requires reversal in this case. *New York C. R. Co. v. Johnson*, 279 U. S. 310, 318-319. Cf. dissent of Mr. Justice Roberts in *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 264, in a case tried before the same judge who presided in the instant case.

7. The prosecutor surreptitiously caused to be submitted to the jury pre-trial statements corroborative of the testimony of Government witnesses.—Exhibit 92 now on file with the Clerk of this Court is a pre-trial written statement of Government witness Raubunas dated October 20, 1939. This Exhibit 92, at pages 4, 5 and 7, in practically identical words, contains statements the same as those made by Raubunas in his oral testimony at the trial in which he asserted that he had seen Kaplan enter an automobile occupied by Kretske and Glasser on three separate occasions in April, 1936 (R. 456-457), in May, 1936 (R. 457-458), and in October, 1936 (R. 461, 462). The prejudice to Glasser of this testimony and particularly its corroboration by the pre-trial written statement is obvious.

The trial court sustained objections to the introduction of this Exhibit 92 (R. 712). But it clearly appears that this exhibit was surreptitiously included in a group of 33 exhibits submitted by the Government at the close of defendant's case and taken to the jury room (R. 1034). The United States attorney took the position that Exhibit 92 had not been formally received in evidence (R. 1100). The opinion of the circuit court of appeals held (R. 1132):

It also appears that on May 17, 1940, the trial court entered an order directing the Clerk of the District Court to certify and send to this court all of the exhibits introduced on behalf of the parties. The Clerk of the District Court, in so certifying, does not certify that Exhibit 92 was sent to the jury. From the record thus appearing we are unable to say that these exhibits were sent to the jury.

The Government has adopted this theory (Br. in Opp., p. 40).

The vitiating flaw in this argument is that, despite the order of the district court to which the circuit court of appeals refers (R. 1092), the clerk declined to state in his certificate that "all" exhibits introduced at the trial were by him certified and transmitted. His certificate states that he transmits only "certain" exhibits (R. 1075). The bill of exceptions thus stands uncontradicted and the conclusion of the circuit court of appeals and the Government is utterly unfounded.

The contention of the Government places it on the horns of a dilemma.—The Government's view is that, despite the inadequacy of this certificate of the Clerk of the District Court, the certificate is to be accepted as conclusive in determining the exhibits which were submitted to the jury. But if we accept this position, the Government is put in no better case, since then the result is to conclusively show the submission to the jury of another and similar pre-trial

statement by Dewes, a Government witness, corroborative of his oral testimony and just as clearly constituting reversible error for the same reason. The certificate of the clerk includes as "exhibits which were introduced in the case," Exhibit No. 115 "Statement of Edward R. Dewes to W. S. Devereau, Special Agent F. B. I., dated October 20, 1939, etc." (R. 1075, 1081-1082).³¹ In this pre-trial statement on file with the Clerk of this Court, Dewes, a Government witness, stated that on May 17, 1938, he gave \$100 to Kretske for a no-bill and that Kretske said he would send it to the "redhead," an Assistant United States Attorney in the Federal Building. Dewes' oral testimony on the trial was in almost identical language (R. 542-543).³² The highly prejudicial nature of this testimony is emphasized by the evidence that on the same day, May 17, 1938, a no-bill was returned against Dewes (R. 529).

The Government can make its choice. But it cannot play fast and loose in this Court. Either the bill of exceptions controls and it must be accepted that Exhibit 92 was submitted to the jury, although excluded by the judge, or, in the alternative, the certificate of the Clerk is conclusive of the fact that Exhibit 115 was submitted to the jury although apparently never offered or received in evidence.

In either case the record shows that there was submitted to the jury a pre-trial statement corroborative of the oral testimony of a Government witness at the trial.

³¹ The bill of exceptions fails to show that this Exhibit was ever offered or received in evidence Cf. R. 551.

³² This oral testimony of the witness may be compared with the language of the pertinent parts of his pre-trial statement (Exhibit 115, p. 6):

"Kretske told me when I gave him the \$100.00 on May 17, 1938, that he was going to send it over to the 'redhead', and he said that the 'redhead' would have a no bill in my case. I did not know the true identity of the man he referred to as the 'red-head' at that time, but I know now that Kretske was referring to an Assistant United States Attorney in the Federal Building at Chicago."

There can be no question that admission of such a pre-trial written statement corroborative of, or consistent with, such highly damaging testimony of a witness at a trial is prejudicial error requiring reversal. *Vicksburg & Meridian Railroad v. O'Brien*, 119 U. S. 99, 101-103; *Brady v. United States*, 39 F. (2d) 312, 315 (C. C. A. 8); *Dowdy v. United States*, 46 F. (2d) 417, 424 (C. C. A. 4) and authorities cited.

VIII

THE EVIDENCE IN THIS CASE FAILS UTTERLY TO SHOW THAT GLASSER WAS A PARTY TO ANY COMBINATION OR AGREEMENT BETWEEN THE ALLEGED CONSPIRATORS OR THAT HE WAS A KNOWING PARTICIPANT IN ANY COMMON AND UNLAWFUL DESIGN

All of the persons indicted with petitioner denied having ever given or promised Glasser any bribe or having ever conspired with him either to solicit bribes or for any other purposes (R. 799, 722, 755, 837-838). There was no evidence of any kind, either direct or indirect, that Glasser ever received a bribe and none that he ever solicited any. Indeed, the prosecutor stated (R. 154): "There isn't anything in this indictment that says that anybody paid Glasser a bribe." The Government's vague theory was that "There was a conspiracy on foot to solicit certain persons to make promises" (R. 154).

As pointed out above, pp. 6-7, and as appears from the analysis of the evidence contained in the opinion of the Circuit Court of Appeals (R. 1122-1127), the proof offered by the Government to show guilt on the part of Glasser consisted merely of showing that money for the purported corruption of petitioner or others (third persons) had been paid by accused persons to certain of petitioner's co-defendants for the promised "fixing" of their cases.

The gist of the offense, of course, is agreement among the conspirators to commit an unlawful act. *United States v.*

Falcone, 311 U. S. 205, 210; *Morrison v. California*, 291 U. S. 82, 92. This, as well as the other elements, may be established by circumstantial evidence. *Reavis v. United States*, 106 F. (2d) 982; *Kassin v. United States*, 87 F. (2d) 183, 184. But in relying on circumstantial evidence to prove Glasser guilty of conspiracy, circumstances must be established upon which to found a legitimate inference of the existence of the unlawful agreement and participation therein by him with knowledge of the agreement. In short, the circumstantial evidence must warrant the jury in finding he had some unity of purpose, some common design and undertaking, some meeting of minds with the others in the alleged unlawful arrangement. Furthermore, the circumstances relied upon as a basis for such inference by the jury must not only be consistent with the guilt of Glasser but must be inconsistent with any hypothesis of innocence on his part. *Shannabarger v. United States*, 99 F. (2d) 957, 961; *Langer v. United States*, 76 F. (2d) 817, 826, 827. And, of course, unless the Government by independent evidence, circumstantial or otherwise, established the existence of the conspiracy and that petitioner was a party to it, the acts or statements of alleged co-conspirators outside the presence of Glasser could not properly be received in evidence. *United States v. Renda*, 56 F. (2d) 601, 602 (C. C. A. 2); *Minner v. United States*, 57 F. (2d) 506, 511 (C. C. A. 10); *Nibbelink v. United States*, 66 F. (2d) 178, 179 (C. C. A. 6); *Mayola v. United States*, 71 F. (2d) 65, 67 (C. C. A. 9); *Minker v. United States*, 85 F. (2d) 425, 427 (C. C. A. 3).

The salutary effect of these principles has peculiar application here in view of the fact that, as is known to all men in public life, purported ability of others to influence actions of public officers through payment of money or otherwise is, without the knowledge of such public officers, frequently made the occasion for receipt of money by such persons from third parties interested in influencing the

official acts of such public officers. It is here that the case fails as against Glasser. Obviously, mere concurrence of (1) payment of money by third persons to alleged co-conspirators accompanied by their hints, innuendoes, or statements as to corruption of Glasser, plus (2) a cessation of prosecutive action by Glasser, gives rise to no legitimate inference that Glasser was a party to the conspiracy. *United States v. Falcone*, 311 U. S. 205, 210-211; *Weniger v. United States*, 47 F. (2d) 692.

As was said in *United States v. Falcone*, 109 F. (2d) 579, 581 (C. C. A. 2) aff'd 311 U. S. 205:

There are indeed instances of criminal liability of the same kind, where the law imposes punishment merely because the accused did not forbear to do that for which the wrong was likely to follow; but in prosecutions for conspiracy or abetting, his attitude towards the forbidden undertaking must be more positive. It is not enough that he does not forego a normally lawful activity, of the fruits of which he knows that others will make an unlawful use; he must in some sense promote their venture himself, make it his own, have a stake in its outcome. The distinction is especially important today when so many prosecutors seek to sweep within the drag-net of conspiracy all those who have been associated in any degree whatever with the main offenders. That there are opportunities of great oppression in such a doctrine is very plain, and it is only by circumscribing the scope of such all-comprehensive indictments that they can be avoided.

The nature of the evidence offered here makes it clear that the initial establishment of participation by Glasser, with knowledge of the conspiracy, must be made to appear from the facts of one of the particular prosecutions, the cessation of which by him is charged to have been the object of the conspiracy. In other words, it will not do merely

to show payment of monies to third persons with regard to one prosecution, together with cessation of prosecution in some wholly different case. Therefore, testing the sufficiency of the evidence to establish a case of guilt on Glasser's part, it is necessary to consider separately the facts put in evidence in each individual prosecution and the facts that they may properly be inferred to show. Two examples will suffice.

1. *Prosecution of Peter Hodorowicz and Clem Dowiat for operation of the 118th Street still.*—The broad general statement of the Government includes the following citations relating to this prosecution (Br. in Opp., pp. 7-9):

Kretske and Horton solicited money for the fixing of many cases and in most instances received it (R. . . . 297, . . .).

.

Upon the receipt of payments prosecutive action would generally cease (R. . . . 261, . . . 270, 271, 276, . . .), . . . the accused would be discharged (R. . . . 297, . . .). . . . and Glasser was known during the negotiation of these transactions to be the person whose conduct was to be influenced (R. . . . 297 . . .).

There was evidence from which the jury could find that the disposition of these cases was the direct result of some act or failure to act on the part of Glasser (R. . . . 297, . . .).

Examination of these citations, in so far as they relate to this case, will show the following, and nothing more: Peter Hodorowicz and Clem Dowiat were arrested September 1, 1937, for operation of a still at 118th Street (R. 259-261, 270, 276). There was evidence that Frank Hodorowicz paid "\$800 to Kretske." The same evening, September 23, 1937, Kretske purported to deliver the money to "Red"

and told Hodorowicz: "Everything is taken care of for tomorrow morning" (R. 295-297). The following morning, September 24, 1937, Commissioner Walker sustained a motion to suppress the evidence (R. 285-286) and they were discharged (R. 261, 271, 297). This evidence the Government would apparently deem damning. It is typical of the facts upon which the Government relies to establish the fact of the unlawful agreement by Glasser.

However, the reason why no court could fairly permit a jury to draw such an inference from such circumstantial evidence is made clear from the following additional facts which happened to be brought out in this particular case: First, Glasser had argued the case to the Commissioner on September 23, prior to the evening of September 23 when the money payment was alleged to have been made (R. 278, 285); second, the Government's witness, Agent Rossner, testified that he gave all evidence he had in his possession (R. 279); third, this same agent's testimony showed that the search warrant, obtained by the original investigating agent and upon the basis of which the search and arrest were made, specified an incorrect address (R. 279, 277, 278). The cessation of prosecution was, therefore, definitely attributable to error of an agent and not to Glasser.

2. *Prosecution of Walter Kwiatowski.*—The same broad general statements of the Government in its brief in opposition rely in part for support on citations to the Kwiatowski case (pp. 7-9):

Kretske and Horton solicited money for the fixing of many cases and in most instances received it (R. 413).

Upon the receipt of payments the accused would be discharged (R. 289, 414).

There was evidence from which the jury could find that the disposition of these cases was the direct result of some act or failure to act on the part of Glasser (R. 289, * * * 413-414 * * *).

The record discloses many instances of Glasser's failure to utilize available information and evidence in securing indictments and in otherwise prosecuting cases (Ex. 74, R. 406-408; Ex. 120, R. 585-587 * * *).

Examination of these citations shows merely: That Walter Kwiatowski sometime between August 25 and September 14, 1938, paid \$600 to defendant Horton for the purported "fixing" of his case (R. 413). Glasser represented the Government (R. 289). On September 14, 1938, Kwiatowski was discharged by the Commissioner (R. 414).

But the record shows that on cross-examination, Kwiatowski denied that he had paid any money to Horton (R. 415). The arresting agent testified that at the hearing before the Commissioner he told the whole truth and withheld no evidence (R. 398); and that he told the Commissioner he had arrested Kwiatowski when he came from the premises for which he had a search warrant, whereupon the Commissioner stated that he had no right to arrest Kwiatowski (R. 397). The substance of Exhibit 74 (R. 406-408), a letter by the investigator in charge to which the Government refers above, was given by the agent in his testimony before the Commissioner (R. 405). It thus appears that in the proceeding before the Commissioner the reason for the discharge of the prisoner was obvious—lack of evidence. As to the subsequent supplemental investigation and its results shown by the so-called letter and report, dated November 10, 1938, Exhibit 120, R. 585-587, there was no showing that any agent conferred personally with Glasser about it as was the usual practice (R. 963). Neither was there any showing that the Alcohol Tax Unit or anyone else subsequently urged or requested Glasser to make presentation of the case to a grand jury.

As a matter of fact, since Glasser's connection with the office terminated soon afterward, in April, 1939 (R. 912), and since there is nothing to show that in the ordinary course of business this matter would, before that date, have been reached for consideration as to presentation to a grand jury, this item falls far short of justifying an inference that Glasser failed properly to utilize the supplementary report.

If such testimony as this be regarded by the Department of Justice as evidence that the disposition of the case was the result of a criminal conspiracy on the part of Glasser, all prosecuting officers are in effect subject to a particularly vicious form of attaind. The citations made by the Government to sustain the conviction are not merely inconclusive but misleading when measured by established principles of law relating to circumstantial evidence. A *prima facie* showing of guilt in this case may be shown, if at all, by reference to the facts of a single prosecution. If it can, let the Government select any one or more prosecutions handled by the petitioner which it may choose, together with a careful statement of the circumstantial facts adduced and all facts which it deems such facts to prove. If upon such a statement, it appears that the ultimate fact of Glasser's guilt of conspiracy may be inferred from such circumstantial facts in evidence, then petitioner will confess the point.

The error of the Circuit Court of Appeals upon the merits has been set forth in parallel columns in the petition for certiorari herein (pp. 33-46). The Government has, so far, replied with nothing but vague assertions which are unsupported by the record. Petitioner denies that there is any evidence connecting him with the so-called conspiracy or any unlawful scheme. If the Government thinks otherwise, let it come forward with specific facts sustainable upon the record and sufficient in law.

CONCLUSION

The petitioner, during the period of his service in the office of the United States Attorney for the Northern District of Illinois, had an outstanding record (see *supra*, p. 5, note 4.) In an office of 18 assistants, he handled at least 25 per cent of the work. United States Attorney Igoe, his superior, now District Judge Igoe, testified that at the times complained of in this alleged indictment, he either ordered or approved of all official steps taken by Glasser; and he also gave an unequivocal statement as to the good character and reputation of petitioner (R. 895, 904). Judge Barnes, for nine years a Federal judge, presumably well qualified to weigh the abilities and performance of a prosecuting attorney, testified that the petitioner was an excellent one, possibly too good—too good for the criminals (R. 720).

The paucity of evidence in this case against Glasser tends strongly to confirm the view that it was initiated out of private enmity. The numerous acts of the prosecutor and judge, which in no view could be deemed consonant with the conduct of a fair trial, further induces the conclusion that Glasser was tried with a malicious zeal which had no regard for the high responsibility and trust reposed in the prosecuting attorneys and trial judges.

For his devotion to duty and observance of his obligation to see justice done, petitioner has been subjected to the ignominy of indictment, trial, and conviction—and the consequent impairment of his ability to earn a livelihood for over two years. It is submitted that this case requires reversal not only in justice to the petitioner but as a safeguard and assurance to all public officers against the peril that their acts, no matter how innocent, may later be made the ground of prosecution.

HOMER CUMMINGS,

WILLIAM D. DONNELLY,

Counsel for Petitioner.

October, 1941.

APPENDIX

U. S. C., Title 18, sec. 88 (Criminal Code, sec. 37):

Conspiring to commit offense against United States. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

U. S. C., Title 18, sec. 91 (Criminal Code, sec. 39):

Bribery of United States officer. Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.

U. S. C., Title 28, sec. 411 (Judicial Code, sec. 275):

Jurors; qualifications and exemptions. Jurors to serve in the courts of the United States, in each State respec-

tively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.

U. S. C., Title 28, sec. 412 (Judicial Code, sec. 276):

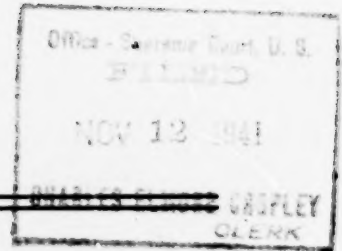
Same; manner of drawing. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

Illinois Rev. Stats. (1939), c. 78, sec. 1:

The county board of each county shall, at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct of the county, giving the place of residence of each name on the list, to be known as the jury list.

FILE COPY

No. 30



In the Supreme Court of the United States
OCTOBER TERM, 1941

DANIEL D. GLASSER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.**

REPLY BRIEF FOR THE PETITIONER.

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

INDEX

AND

CONCORDANCE

	Pet. Br.	Gov't. Br.	Reply Br.
I. The alleged indictment was not in fact returned in open court by any grand jury.....	12	32	2
II. The jury commissioner and the clerk of the district court violated the laws of the State of Illinois and of the United States in the selection of the grand jury.....	20	38	6
III. The trial jury was unfairly and prejudicially constituted by the illegal delegation of their duties by the clerk and the jury commissioner in violation of the petitioner's right to trial by an impartial jury.....	23	50	11
IV. The alleged indictment is fatally defective in failing to inform petitioner of the charge against him and in charging a conspiracy to commit a substantive offense which itself required concert of action and plurality of agents.....	27	43	15
V. Petitioner by action of the trial court and through no fault of his own, was deprived of effective assistance of counsel in violation of the Fifth and Sixth Amendments.....	31	56	16
VI. The argument of the Government as to the evidence makes reversal mandatory.....	72	11	18
A. The concessions of the United States require reversal under established principles of law....	..	12	18
B. The circumstantial facts in evidence and all facts that may be reasonably inferred from them fall far short of excluding the hypothesis of innocence, and the verdict thereon was obviously founded on pure conjecture and speculation.....	..	13	19
The Government concedes that circumstances as to no single prosecution are sufficient to sustain the verdict.....	..	31	20
The cumulation of non-probative and unrelated sets of circumstances cannot create substantial evidence.....	..	31	21
The so-called common pattern of instances suggested by the Government is not permitted by the circumstances of any one of the cases upon which the Government relies, and there is no direct evidence against Glasser.....	..	11, 31	22
(a) The Hodorowicz Brothers cases.....	..	14	25
(1) The 119th Street still.....	..	15	25
(2) Peter Hodorowicz-Walter Hort.....	..	98-99	15
		99-100	25

INDEX

	Pet. Br.	Gov't. Br.	Reply Br.
(3) Walter Hort.....	4	16 100-101	26
(4) Zarrattini.....		101-102	26
(5) Clem Dowiat.....		15 note 6 102	26
(6) 118th Place still.....	75	12 note 3 103-105	27
(7) Stony Island still.....		17, 20 105-109	27
(8) General investigation of Hodorowicz group.....		17-22 109-117	28
(b) The cases involving Kaplan and his associates.....		22	29
(9) Western Avenue.....		22-24 117-135	29
(10) Spring Grove.....		23-25 117-128	31
(11) Boguch removal.....		25 128-129	34
(12) Beisner farm.....		25-26 129-135	34
(13) Downer's Grove.....		135 note	35
(c) Other cases.....			
(14) Kwiatowski.....	76-78	27 136-137	35
(15) Abosketes.....		28 137-140	37
(16) Leo Vitale.....		28 144-149	39
(17) Libel action against Chrysler car of Rose Vitale.....		28-29 145-149	39
(18) Wroblewski Brothers.....		27 149-152	41
(d) "Direct evidence" of the participation of Glasser.....		29	41
(1) Kretske's alleged statements that pay- ments of money were to go to "Red".....		30	41
(2) Testimony of Rabaunas that he saw Glasser with Kretske and Kaplan.....		30	42
(3) Svec's testimony as to facts "indicat- ing" meetings between Glasser and Yarrio—a bootlegger indicted but never convicted.....		30	42
(4) Alleged apology and advice on attorney to Hodorowicz.....		30	43
(5) Glasser's expulsion of Dowd from the court room in the Rose Vitale libel case.....		30	45
(6) Glasser's "release" of Joppek.....		30	45
(7) Glasser's "release" of Rabaunas on Christmas eve.....		30	46
(8) Glasser's "receipt and acceptance" of a case of liquor sent by Frank Hodoro- wicz.....		31	47

INDEX

iii

	Pet. Br.	Gov't. Br.	Reply Br.
VII. The conduct of the trial judge was highly prejudicial to petitioner's right to a fair trial.....	37	67	40
1. The trial judge erroneously admitted highly prejudicial reports, Exhibits 81A and 113.....	37	63	51
2. Hostile cross-examination and prejudicial remarks of the trial judge deprived petitioner of an impartial trial.....	42	..	56
(a) Reiteration of ratio of no bills to total of cases presented to grand jury.....	42	72 note ¶ 3	56
(b) Judge's statement as to availability of Ritter as witness.....	43	75 note ¶ 7(b)	57
(c) Testimonial statements as to Abosketes...	44	74 note 6	57
(d) Rhetorical questions as to Glasser's judgment.....	46	76 note	58
(e) Attempt to nullify testimony of Glasser's witness, Judge Igoe.....	47	73 note ¶ 5	59
(f) Wilful misrepresentation as to duty of petitioner.....	49	70 note ¶ 1, 2	62
(g) Hostile questioning of petitioner in connection with the Vitale libel case.....	52	76-77 note	64
(h) Hypothetical question without foundation in the record.....	53	77	64
VIII. The improper conduct of the prosecuting attorney violated the right of petitioner to a fair and impartial trial.....	54	81	67
1. During the trial the prosecuting attorney wrongfully deprived petitioner of his right to examine exhibits introduced or marked for identification.....	55	89	67
2. The prosecutor removed from the office of the clerk and lost exhibits deposited with the clerk forming part of the record in this case.....	55	94	72
3. After trial, prosecutor McGreal unlawfully mutilated exhibits constituting a part of the record in this case.....	57	95	74
4. Prosecutor Ward, by his leading questions, assumed the role of a witness.....	60	81	74
5. The prosecuting attorney read to the jury only part of the testimony of a witness before the grand jury, deliberately leaving the jury to infer contrary to fact, that this was the only testimony given by the witness.....	63	87	76
6. The prosecutor persisted in the putting of specious questions and damaging innuendoes Innuendo of question whether Glasser had called probationer Workman to his office....	66	83	78
The innuendoes that in the Kwiatowski case before the commissioner, and in the Hodorowicz case before Judge Woodward Glasser had suppressed evidence were obviously directed to creating a conjecture of guilt in the minds of the jury.....	66	83-84	..

	Pet. Br.	Gov't. Br.	Reply Br.
The prosecutor's statement as of personal knowledge that Glasser knew persons accused of various law violations was highly prejudicial and reversible error.....	67	84	78
There was no factual basis for the prosecutor's statement, in his role as witness, that Glasser visited 1062 Polk Street and held a conversation with a man who was in the Workman case.....	68	85 note 4	..
7. The prosecutor surreptitiously caused to be submitted to the jury inadmissible pre-trial statements corroborative of the testimony of Government witnesses.....	69	91	80

CITATIONS.

	Page
<i>Adler v. United States</i> , 182 Fed. 464	50, 67
<i>Aetna Ins. Co. v. Kennedy</i> , 301 U. S. 389	17
<i>Agnew v. United States</i> , 165 U. S. 36	7
<i>Aylesworth v. Illinois</i> , 65 Ill. 301	4
<i>Bank v. Kennedy</i> , 17 Wall. 19	66
<i>Barthelmas v. Fidelity-Phenix Fire Ins. Co.</i> , 103 F. (2d) 329	17
<i>Berger v. United States</i> , 295 U. S. 78	67, 80
<i>Bishop v. United States</i> , 16 F. (2d) 410	18
<i>Boyd v. United States</i> , 142 U. S. 450	39
<i>Boykin v. United States</i> , 11 F. (2d) 484	82
<i>Brady v. United States</i> , 39 F. (2d) 312	82
<i>Brown v. United States</i> , 150 U. S. 93	56
<i>Buessel v. United States</i> , 258 Fed. 811	66, 81
<i>Burns v. United States</i> , 287 U. S. 216	15
<i>Century Indemnity Co. v. Nelson</i> , 303 U. S. 213	12
<i>Chaffee v. Boston Belting Company</i> , 22 How. 217	81
<i>Chappell v. State</i> , 8 Yerger (Tenn.) 166	4
<i>Chicago, M. St. P. Ry. Co. v. Coogan</i> , 271 U. S. 472	21
<i>Cochran v. United States</i> , 41 F. (2d) 193	18
<i>Collenger v. United States</i> , 50 F. (2d) 345	56
<i>Cornette v. Baltimore & O. R. Co.</i> , 195 Fed. 59	5
<i>Coulston v. United States</i> , 51 F. (2d) 178	84
<i>Cox v. United States</i> , 96 F. (2d) 41	18
<i>Cox v. Vaught</i> , 52 F. (2d) 562	26
<i>Dowdy v. United States</i> , 46 F. (2d) 417	82
<i>Downey v. United States</i> , 91 F. (2d) 223	5
<i>Dunn v. United States</i> , 238 Fed. 508	14
<i>Ellicott v. Pearl</i> , 10 Pet. 412	82
<i>Ex Parte Bain</i> , 121 U. S. 1	6
<i>Ex Parte Wilson</i> , 114 U. S. 417	6
<i>Falcone v. United States</i> , 311 U. S. 205	42
<i>Gold v. United States</i> , 26 F. (2d) 185	67
<i>Gunning v. Cooley</i> , 281 U. S. 90	20
<i>Hanna v. Maas</i> , 122 U. S. 24	66
<i>Heacock v. State</i> , 42 Ind. 393	4
<i>Henry v. State</i> , 4 Humph. (23 Tenn.) 270	4
<i>Hodges v. Eaton</i> , 106 U. S. 408	17

	Page
<i>Hopt v. Utah</i> , 110 U. S. 574	51
<i>Hunter v. United States</i> , 62 F. (2d) 217	51
<i>In re M'Call</i> , 145 Fed. 898	81
<i>Johnson v. Zerbst</i> , 304 U. S. 458	6, 17
<i>Jones v. Buckell</i> , 104 U. S. 554	66
<i>Karchmer v. United States</i> , 61 F. (2d) 623	18
<i>Kassin v. United States</i> , 87 F. (2d) 183	18
<i>King v. United States</i> , 1 F. (2d) 931	66, 81
<i>Krauss Bros. Co. v. Mellon</i> , 276 U. S. 386	66
<i>Langnes v. Green</i> , 282 U. S. 531	15
<i>Lau Lee v. United States</i> , 67 F. (2d) 156	66, 81
<i>Ledbetter v. United States</i> , 108 Fed. 52	3, 4
<i>Leftwitch v. Lecanu</i> , 4 Wall. 187	66
<i>Lessor of Fisher v. Cockerell</i> , 5 Pet. 248	66, 81
<i>Logan v. United States</i> , 144 U. S. 263	56
<i>Long v. State</i> , 56 Ind. 133	4
<i>Lowdon v. United States</i> , 149 Fed. 673	80
<i>McCandless v. United States</i> , 298 U. S. 342	18, 83
<i>Malone v. United States</i> , 94 F. (2d) 281	82
<i>Miller v. Territory of Oklahoma</i> , 149 Fed. 331	83
<i>Mima Queen v. Hepburn</i> , 7 Cranch 290	54
<i>Minker v. United States</i> , 85 F. (2d) 425	24
<i>Minner v. United States</i> , 57 F. (2d) 506	55
<i>Moss v. Gulf Compress Co.</i> , 202 Fed. 657	81
<i>New York C. R. Co. v. Ambrose</i> , 280 U. S. 486	20
<i>Nurnberger v. United States</i> , 156 Fed. 721	75
<i>Ogden v. United States</i> , 112 Fed. 523	83
<i>Paddock v. United States</i> , 79 F. (2d) 872	18
<i>Patton v. United States</i> , 281 U. S. 276	18
<i>People v. Clempitt</i> , 362 Ill. 534	9
<i>People v. Fudge</i> , 342 Ill. 574	9
<i>People v. Mack</i> , 367 Ill. 481	9
<i>People v. Mankus</i> , 292 Ill. 435	9
<i>People v. Parman</i> , 14 Cal. (2d) 17, 92 P. (2d) 387	10
<i>People v. Palmer</i> , 11 N. Y. St. Rep. 817	41
<i>People v. Schracberg</i> , 347 Ill. 392	9
<i>Prettyman v. United States</i> , 180 Fed. 30	55
<i>People v. Traeger</i> , 372 Ill. 11	10
<i>Reed v. Gardner</i> , 17 Wall. 409	66
<i>Renigar v. United States</i> , 172 Fed. 646	4, 6
<i>Rodriguez v. United States</i> , 198 U. S. 156	15

	Page
<i>Sattler v. People</i> , 59 Ill. 68	4
<i>Singer v. United States</i> , 58 F. 2d 74	84
<i>Slade v. United States</i> , 85 F. (2d) 786	5
<i>State v. Blackwelder</i> , 182 N. C. 899	41
<i>State v. Crilly</i> , 69 Kan. 802	4
<i>State v. Gatlin</i> , 170 Mo. 354	41
<i>State v. Riggs</i> , 61 Mont. 25	41
<i>Stevens v. The White City</i> , 285 U. S. 195	20
<i>Taliaferro v. United States</i> , 47 F. (2d) 699	80
<i>Thornell v. People</i> , 11 Col. 305	4
<i>Todd v. United States</i> , 221 Fed. 205	83
<i>Towbin v. United States</i> , 93 F. 2d 861	21
<i>Troutman v. United States</i> , 100 F. (2d) 628	49
<i>Tumey v. Ohio</i> , 273 U. S. 510	18
<i>United States v. Ambrose</i> , 3 Fed. 283	8
<i>United States v. Ballard</i> , 35 F. Supp. 105	10
<i>United States v. Benson</i> , 31 Fed. 896	8
<i>United States v. Bishop</i> , 47 F. (2d) 95	5
<i>United States v. Chaires</i> , 40 Fed. 820	9
<i>United States v. Dressler</i> , 112 F. (2d) 972	83
<i>United States v. Gale</i> , 109 U. S. 65	15
<i>United States v. Greene</i> , 146 Fed. 803	41
<i>United States v. McNamara</i> , 91 F. (2d) 986	55
<i>United States v. Mitchell</i> , 136 Fed. 896	8
<i>United States v. Murphy</i> , 224 Fed. 554	14
<i>United States v. Potash</i> , 118 F. 2d 54	82
<i>United States v. Renda</i> , 56 F. (2d) 601	24
<i>United States v. Sprengel</i> , 103 F. 2d 876	55
<i>Vicksburg & Meridian etc. v. O'Brien</i> , 119 U. S. 99	82
<i>Weems v. United States</i> , 217 U. S. 349	49
<i>Westcott v. State</i> , 31 Fla. 458	4
<i>Wiborg v. United States</i> , 163 U. S. 632	49
<i>Williams v. United States</i> , 93 F. (2d) 685	50, 51, 67
<i>Wuichet v. United States</i> , 8 F. (2d) 561	10

TEXTS, STATUTES AND RULES.

Act of January 30, 1879, c. 552, §2, 21 Stat. 43, repealed by §276 of the Judicial Code, Act of March 3, 1911, c. 231, 36 Stat. 1164	8
--	---

	Page
Henry P. Chandler, The Administrative Office of the United States Courts, 2 F. R. D. 53	24
Greenleaf, Evidence:	
Sec. 13	41
Sec. 99	51
Illinois Revised Statutes, 1939, c. 78, Section 1, Sec- tion 25	10
18 U. S. C. Section 556	6
28 U. S. C. Sections 411, 412	7, 11
U. S. Supreme Court Rule 26(7)	49

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 30

DANIEL D. GLASSER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.**

REPLY BRIEF FOR THE PETITIONER.

The brief of the United States, failing in many instances to meet the issues, has by way of avoidance raised new questions. While many of the contentions appear to be so unfounded in law or on the record as to be frivolous, the apparent earnestness with which they are advanced and the Government's prolix and disjointed attempt to argue the sufficiency of the evidence require this reply. For the convenience of the Court, in view of the many points involved, there is included in the Index a detailed Concordance of the various points mentioned in the three briefs.

I.

The Alleged Indictment Was Not In Fact Returned In Open Court By Any Grand Jury.

(Pet. Br. 12-20; Gov't Br. 32-37.)

That the alleged indictment was not in fact returned in open court by any grand jury has been the contention of the petitioner from the beginning. The Government's statement (Gov't Br. 32) that "no contention seems to be made that the indictment was not in fact returned in open court" clearly disregards:

(a) The motion to quash (R. 142):

"* * * the said indictment was not properly returned in open court * * *."

(b) Assignment of Errors No. i(b) (R. 115):

"That the indictment was not properly returned in open court."

(c) The petition for certiorari (p. 16):

"The petitioner, with the other defendants, by a motion to quash, supported by affidavit, raised the point that the alleged indictment had not been properly returned in open court * * *."

(d) The reply brief on petition for certiorari (pp. 2-3):

"* * * the record does clearly show that petitioner contended below as he does here that the purported indictment was not returned by the grand jury (R. 142, 149)."

(e) The re-emphasis in the petitioner's main brief (p. 12):

"The petitioner, with the other defendants, filed a motion to quash the indictment because, among other

things, 'the said indictment was not properly returned in open court'."

Because petitioner was not in court on September 29th and so cannot know what took place, and because the record fails to show return of the indictment as required by law for his protection against unfounded accusations, it is, of course, his position that none was returned against him.

The Government recognizes the correctness of the rule stated in the Federal courts and for which petitioner contends (Gov't Br. 33):

It seems to be well settled that the record must show that the indictment was returned into court by the grand jury *either by a minute entry to that effect or by indorsement of the fact upon the indictment itself.*

But the Government contends that indorsements by the clerk and the foreman are sufficient (Gov't Br. 33).

In the case of *Ledbetter v. United States*, 108 Fed. 52, 53 (C. C. A. 5), the indictment bore indorsements identical in wording with those which obtain here:

"A true bill. James W. Powell, Foreman of the Grand Jury.

"Filed in open court this 21st day of Nov., 1899. J. W. Dimmick, Clerk."

The Court in that case, as more fully appears from the petition for certiorari (p. 18), said (108 Fed. 52, 55):

Neither this minute entry, nor the file mark, nor the two together, was sufficient to identify the indictment as properly returned into the district court *by the grand jury*, and this seems to be a plain error on the face of the record. (Italics supplied.)

The Federal rule, therefore, is contrary to the Government's position here.¹

That the indorsements by the clerk and the foreman of the jury were recognized to be inadequate is shown by the effort to cure the defect by the surreptitious addition to the motion slip (see Main Brief, p. 17). For the information of this Court, a photolithograph of this motion slip was printed at page 17 of petitioner's reply brief on petition for certiorari. This shows clearly the violence of the Government's presumption that the addition to this slip "was made by Judge Wilkerson". Casual examination indicates his initials were affixed on the date of the order discharging the Grand Jury, which was long before the addition was made.

The Government's argument (Gov't Br. 35) indicates a complete misapprehension of the nature of a *nunc pro tunc* order. A formal order signed by the court is recognized as necessary, and is required for the express purpose of precluding, in such vital matters as this, the very conjectural conclusions which the Government here makes (Gov't Br. 36):

This entry was, *we think*, ordered by Judge Wilkerson to be made so that the record might more specifically show that the indictment was returned in open court by the grand jury. (Emphasis supplied.)

¹ It may be conceded that certain of the State courts have, in conflict with the *Ledbetter* and *Remigar* cases, held indorsement by the foreman and by the clerk adequate to satisfy the requirement. However, *State v. Crilly*, 39 Kan. 802, 77 P. 701, and *Westcott v. State*, 31 Fla. 458, cited by the Government, are not in point since in each case the clerk's indorsement showed the return by the grand jury. Moreover, as against the State cases cited by the Government, there should be contrasted those which recognize that return of the indictment by the grand jury is such a vital step that it must definitely appear from the record. *Thornell v. People*, 11 Col. 305; *Sattler v. People*, 59 Ill. 68; *Aylesworth v. Illinois*, 65 Ill. 301; *Heacock v. State*, 42 Ind. 393, 394; *Long v. State*, 56 Ind. 133; *Chappell v. State*, 8 Yerger (Tenn.), 166; *Henry v. State*, 4 Humph. (23 Tenn.), 270, 272.

The very purpose of the rule requiring a *nunc pro tunc* order for entries made after the term is designed to prevent the Government or any other person or court from "thinking" or "guessing" away the rights of litigants. The return of an indictment is not a technicality; it is equally as important as the return of a verdict. Furthermore, the Government's assumption that Judge Wilkerson had acted to amplify the motion slip also assumes that he would order such an ambiguous and non-conclusive entry—"The Grand Jury return 4 Indictments in open Court". This further demonstrates the invalidity of the Government's position.

The Government's own citations (Gov't Br. 36) set out the form of a *nunc pro tunc* order, *Slade v. United States*, 85 F. (2d) 786, 787, and recognize the necessity that where a *nunc pro tunc* order is made after the term "the party opposing correction of the record should have the usual rights of inspection and cross-examination and proof." *Downey v. United States*, 91 F. (2d) 223, 233. Petitioner has never questioned the power of a court during the same term to correct its records without a *nunc pro tunc* order or notice to defendants. The Government cites *United States v. Bishop*, 47 F. (2d) 95, 96, to show that notice before entry of a *nunc pro tunc* order is unnecessary, but the case is clearly not in point since it specifically states:

"We have, therefore, no question of correcting the record after the term."

Indeed, *Cornette v. Baltimore & Ohio R. Co.*, 195 Fed. 59, 61, also cited by the Government, quotes with approval the rule which permits correction by *nunc pro tunc* order "upon notice to the parties in interest."

The Government concludes (Gov't Br. 37) that:

"Even if it were assumed that this record showing was made without authority, as petitioners contend,

it nevertheless reflects the actual facts relating to the return."

We refrain from comment which might dim the luster of this bland assumption—particularly since the actual fact of the return of any indictment, and the adequacy and authenticity of the required record, are the very questions to be determined.

The statute invoked by the United States respecting matters of form which do "not tend to the prejudice of the defendant" (18 U. S. C., sec. 556) has no application here, because this is a matter not of form but of substance; by its very terms it applies only to indictments "found and presented by a grand jury," and to say the least it tends to the prejudice of the defendant. The defect here is no matter of mere form. Since the record fails to show "indictment of a grand jury" within the meaning of the Fifth Amendment, the trial court was without jurisdiction to try petitioner and the sentence is necessarily void. *Ex Parte Wilson*, 114 U. S. 417, 429; *Ex Parte Bain*, 121 U. S. 1, 13; *Johnson v. Zerbst*, 304 U. S. 458, 463; *Renigar v. United States*, 172 Fed. 646, 648.

II.

The Jury Commissioner and the Clerk of the District Court Violated the Laws of the State of Illinois and of the United States in the Selection of the Grand Jury.

(Pet. Br. 20-23; Gov't Br. 38-43.)

The arbitrary exclusion of the names of women from the box from which the list of grand jurors was drawn was an obvious violation of law. In answer, the Government merely attempts to minimize the error on the mixed ground that "so brief a period elapsed between July 1, 1939, the effective date of the State law rendering women

eligible as jurors * * * and August 25, 1939, the date the grand jury was summoned, that it was not error to omit the names of women from the Federal jury list where it was not shown that women's names had yet appeared on the State jury lists" (Gov't Br. 40, note 4). But in substance this argument amounts merely to contention that, until occasion arose for application of the law in the State courts, the law admittedly in effect was nevertheless to be disregarded in the selection of grand jurors in the Federal courts in Illinois.

There is presented a clear breach of mandatory law.—Petitioner has no quarrel with the Government's contention that technical irregularities, ~~in~~ the absence of a showing of prejudice, do not require ~~that~~ an indictment be quashed. Neither does he question the correctness, on their particular facts, of the *Agnew* case or the Government's citations following it (Gov't Br. 41-42). They are inapposite. As pointed out in petitioner's main brief (p. 23), the wilful failure of the clerk and jury commissioner to obey the positive requirements of a mandatory provision of the law is no mere irregularity.

Title 28, U. S. C., provides in pertinent substance:

Sec. 411. Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications * * * as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United State are summoned.

Sec. 412. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding.

The statutes, therefore, are clear and specific.

The distinction between mere irregularity and violation of the law was recognized in *United States v. Ambrose*, 3 Fed. 283, per Swayne, J. (p. 286):

I think no sound view of the subject will warrant any other conclusion than that that provision² is mandatory, and I think it is the duty of every court of the United States to regard it and carry it out. * * * That statute * * * must be obeyed as to the substantial provisions in summoning the grand jurors, as well as the petit jurors. * * * The *venire* must be issued in conformity to its requirements. * * * The jurors drawn, whose names are put into the box, and who are selected and summoned to serve on the grand jury, must have the qualifications prescribed by law. But, on the other hand, * * * any slight irregularity, such as may arise in any case in spite of the greatest care and caution * * * is not fatal to the indictment.

This same distinction was recognized in *United States v. Benson*, 31 Fed. 896 (where it appeared that a grand juror was not named as taxpayer on the assessment roll). There the court (through Field, J.) stated the rule as follows (p. 901):

Omissions which do not impair any substantial right or prejudice the defense of the accused must be disregarded, *unless otherwise required by positive statute*. (Emphasis supplied.)

And again in *United States v. Mitchell*, 136 Fed. 896, 904, the court said:

“Before the court can consider any objections made, it must at least appear, not from the belief expressed, but from the facts stated, that the defendant has suf-

² The reference was to Act of January 30, 1879, c. 552, § 2, 21 Stat. 43, repealed by § 276 of the Judicial Code, Act of March 3, 1911, c. 231, 36 Stat. 1164, which replaced it. 28 U. S. C. sec. 412.

ferred some impairment of a substantial right or some prejudice, *or that the things complained of violate the requirements of a positive statute.*" (Emphasis supplied.)

And in *United States v. Chaires*, 40 Fed. 820, 821, the court also recognized that the statutory requirement—that all jurors shall be publicly drawn from a box containing at the time of each drawing the names of persons possessing the qualifications prescribed by the statute—is mandatory.

Moreover, where it appears that no attempt is made to comply with the law, the Illinois decisions hold that a motion to quash must be sustained even though no prejudice is shown. *People v. Mack*, 367 Ill. 481, 487, 488; *People v. Clempitt*, 362 Ill. 534; *People v. Schraeberg*, 347 Ill. 392; *People v. Fudge*, 342 Ill. 574; *People v. Mankus*, 292 Ill. 435. There is thus, contrary to the Government's statement (Gov't Br. 43, n. 7), no conflict between the Federal and Illinois decisions.

Exclusion of women from the grand jury box in this case was the result of deliberate and arbitrary action on the part of the clerk and the jury commissioner. The motion to quash alleged that the clerk and jury commissioner excluded from the box containing names of persons selected to serve as grand jurors all persons of the female sex because of their sex and included only persons of the male sex, illegally, improperly and in violation of the laws of the United States and of Illinois (R. 141-142). The affidavit in support alleged that, deliberately "upon the advice of the United States Attorney by his representative Martin Ward" (R. 148), the prosecutor herein, they wilfully omitted from the box qualified female electors in violation of the Illinois law and refused to recognize the law for the pretended reasons that the amendatory act was not mandatory and "the said Clerk and Commissioner were not

required to include qualified female electors in said list" (R. 148). The prosecutor's motion to strike admitted all allegations of the motion to quash (R. 150).

It thus appears that there was here no mere irregularity, but a deliberate and intentional non-compliance. The clerk and commissioner simply set their own measure of qualifications of grand jurors in a wilful disregard of the mandatory requirement of the statutes that members of each sex be included in the jury list.

It is plain that neither of the two cases cited by the United States dealing with exclusion of women from the jury is controlling here. In *Wuichet v. United States*, 8 F. (2d) 561, 563, there was no showing of arbitrary discrimination; nor does it appear that the Ohio law qualifying women as jurors made inclusion of the names of members of each sex mandatory. The decision in *United States v. Ballard*, 35 F. Supp. 105, 106 (S. D. Calif.), clearly supports petitioner since it recognizes that, if the State law makes the inclusion in the list of both sexes mandatory, the practice of exclusion is illegal and must be condemned—although there the California Supreme Court in *People v. Parman*, 14 Cal. 2d 17, 92 P. 2d 387, 388, had held that the provisions of the code as to inclusion of women on juries "are directory and not mandatory."

Here the Illinois Revised Statutes, 1939, c. 78, specifically provide in both section 1 and section 25 for the inclusion in the jury list of members of each sex (see Pet. Br. 21, note 11). And the Government admits that in *People v. Traeger*, 372 Ill. 11, the Supreme Court of Illinois held that, in making the discretionary annual revision provided by the statute, it is mandatory that the commissioners include the names of eligible women (Gov't Br. 40, note 3). It appears, therefore, that the authorities cited by the United States in no way militate against petitioners contention that when the officers of the court arbitrarily and wilfully

attempt to violate and nullify the positive requirements of the State statute as to qualifications adopted by 28 U. S. C., secs. 411 and 412, the indictments of a grand jury so drawn must be quashed even though no other prejudice to the defendant is shown than that inherent in the breaching of a law enacted for his protection.

III.

The Trial Jury was Unfairly and Prejudicially Constituted by the Illegal Delegation of Their Duties by the Clerk and the Jury Commissioner in Violation of the Petitioner's Right to Trial by an Impartial Jury.

(Pet. Br. 23-27; Gov't Br. 50-56).

Preservation of the error.—One of the Government's answers to petitioner's contention that he was deprived of his right to an impartial trial through the manipulation of the trial jury is its sheer speculation and blithe "assumption" (Gov't Br. 52) that evidence or argument may have been adduced by the Government which caused the trial court to find the allegations in the two affidavits without merit and contrary to fact. The denial of the motion must indeed be accepted as an indication that the trial court found them without merit, but the suggestion that the court may have found them contrary to fact is based on two unsupportable premises:

(1) The first of these is that the Government may have introduced evidence rebutting the showing of the affidavit. Of this it may be said that petitioner, contrary to the Government's assertion (Gov't Br. 52 note) does claim that the truth of the allegations was not contested at the hearing and that, after presentation of the affidavits to the court and without argument, the motion was summarily overruled. The bill of exceptions contains the following entries (R. 1046, 1059):

On April 22nd, 1940 arguments of counsel on said motions were heard by the court, and taken under advisement, until April 23, 1940.

• • • • •

Thereupon the defendant, Daniel D. Glasser, filed his three affidavits in support of his motion for a new trial, and in arrest of judgment, which affidavits are in words and figures as follows

• • • • •

Thereupon on to-wit, April 23, 1940, the court overruled and denied the motions of the defendants for a new trial.

The bill of exceptions thus clearly indicates that, subsequent to the filing of the affidavits, there was no hearing at which evidence was introduced, or even that argument was had thereon.

Moreover, the certificate to the bill of exceptions stating that it contains "all evidence adduced at the said trial" must be read as including any evidence which was given on the motion for new trial, particularly since the judge certified (R. 1069) that the Bill of Exceptions—

contains all the material facts, matters, things, proceedings, rulings, and exceptions thereto occurring upon the trial of said cause, and not heretofore a part of the record herein, including all evidence adduced at the said trial.

It is obvious that—since the motion for new trial, and affidavits, exhibits, minutes, and orders on the motion for new trial were all included in the bill of exceptions—the court in the certificate used the word "trial" as embracing all proceedings up to and including judgment. *Century Indemnity Co. v Nelson*, 303 U. S. 213, 217. In addition, petitioner clearly assigned the denial of a new trial as error

(R. 128), and the certificate is that the bill of exceptions contains "all the material facts, matters, things, proceedings, rulings, and exceptions thereto" (R. 1069).

Giving to the bill of exceptions its required absolute verity, it can only be concluded that no evidence was adduced by the Government on the motion for new trial and that no other objection to the allegations of the affidavit was made.

(2) The second suggestion here (Gov't Br. 51-52) is that the Government may have advanced in the trial court some argument to counter the affidavit filed by Glasser (R. 1049-1057). If such an argument was made as the Government contends and petitioner denies, there is nothing which now prevents the Government from stating what that argument was or adopting it here with all of its original force and vigor.

On the merits.—As to the merits of the contention of petitioner little need be added. Plainly absurd is the suggestion of the Government (Gov't Br. 53-54) that a mere technical irregularity is shown by the surrender of the function of selection of one-half of the names for the jury box to a specially coached group within the League of Women Voters. The contention that upon such a showing neither injury nor prejudice can be inferred finds no support in the facts of the cases cited by the Government. Neither does petitioner question the correctness, on their particular facts, of the cases cited by the Government to the effect that the clerk and jury commissioner are permitted to exercise a reasonable degree of selectivity in determining the names placed in the box. They have no application here, for, among other things, the clerk and jury commissioner completely surrendered their functions.

The rule applicable on the facts here presented is stated in the numerous citations contained in petitioner's main brief (pp. 25-26); and it is significant that the Government

has declined to so much as cite these cases, much less discuss or attempt to distinguish them. For example, in *Dunn v. United States*, 238 Fed. 508 (C. C. A. 5) it appeared that the names in the box from which the grand jury had been drawn had been placed there by the jury commissioner acting, not with the clerk, but with the deputy clerk who was of the same political party as the jury commissioner. In holding that a plea of abatement on this ground should have been sustained, the court said (p. 511):

The statute designates the officials who are to select the names to be drawn from for jury service. A body made up of persons not so selected is not the grand jury contemplated by the law. * * * It is a means adopted to secure fair dealing and impartiality in the body entrusted with the power of making criminal charges. There can be no certainty that the purposes of the statute will not frequently be defeated if an indictment, which is seasonably impeached on the ground that it was found by grand jurors selected by persons having no authority whatever to select them, may be sustained because the evidence adduced with reference to it is such as to make it appear that the defendant was not actually prejudiced as a result of the selection of those who preferred the charge having been made without legal authority. * * * With reference to the participation of unauthorized persons in the selection of the names to go in the jury box, from which panels for service are to be drawn, it was said, in the opinion in the case of *United States v. Murphy*, (D. C.) 224 Fed. 554, 564:

“The law has specified who is to make the selection of jurors, and it is unsafe and unwise to permit a departure from its provisions. Courts cannot stop to inquire in each case whether such participation, however indirect, has been harmful in a given case. The only safe rule is to prohibit and condemn it absolutely.”

The designation made by the statute of the officials charged with the duty of selecting the names to be drawn from to make up grand and petit juries is a means adopted to prevent the pollution of the stream of justice at its source. The provision was intended to guard the administration of the criminal law against improper influences. The court is not vested with a discretionary power to dispense with a compliance with an essential feature of a safeguard prescribed by law.

In addition to the other Federal cases on the subject this court has twice recognized that, where the jury list is selected by other than the designated officials, the whole proceeding of forming the panel is void. *United States v. Gale*, 103 U. S. 65, 71; *Rodriguez v. United States*, 198 U. S. 156. And the Government's present appeal to the "discretion of the trial judge" (Gov't Br. 56) is no answer, since denial of the fundamental right to trial by a jury representing a fair and impartial cross-section of the community is a plain abuse of discretion. Cf. *Langnes v. Green*, 282 U. S. 531, 541; *Burns v. United States*, 287 U. S. 216, 222-223.

IV.

The Alleged Indictment is Fatally Defective in Failing to Inform Petitioner of the Charge Against Him and in Charging a Conspiracy to Commit a Substantive Offense Which Itself Required Concert of Action and Plurality of Agents.

(Pet. Br. 27-31; Gov't Br. 43-49.)

This subject is adequately covered in petitioner's main brief, for the Government in its answer merely ignores the plain language of the indictment.

V.

Petitioner, By Action of the Trial Court and Through No Fault of His Own, Was Deprived of Effective Assistance of Counsel in Violation of the Fifth and Sixth Amendments.

(Pet. Br. 31-37; Gov't Br. 56.)

The Government's contention that both Stewart and Glasser consented to the trial court's appointment of Glasser's counsel Stewart to act also as counsel for Kretske, whose interests were inconsistent with those of Glasser, is obviously ill-founded.

Initially, Stewart objected to appointment (R. 180). Glasser objected to the appointment in unequivocal terms (R. 181). After the court had indicated that he intended to proceed immediately with the selection of a jury (R. 181), Kretske said he could "accept the appointment" (R. 183). To this Glasser's counsel Stewart merely stated immediately that

As long as the Court knows the situation. I think there is something to the fact that the jury knows we can't control that (R. 183).

Nothing in this language indicates a waiver by Stewart of either his or Glasser's objection. At most it was a resignation to and recognition of the court's orders; in so doing, however, he called the jury's attention to the fact that, despite the conflict in interests involved, "we can't control" the situation.

The Government's argument turns entirely upon its contention that, because Glasser did not repeat his objection against appointment of Stewart to act for Kretske, the "implication" is that the "matter was discussed between them and Kretske and that Glasser consented to Stewart's appointment" (Gov't Br. 60). But in these circumstances—

fully apparent to the trial court—the only manner in which Glasser might properly be deemed to have waived his right would be by express statement from him. He had stated his position, had not changed it, and his attorney had no authority from him to change it. For the binding effect upon the client of what the attorney does is not to be extended beyond the actual or implied authority from his client under which he acts. *Barthelmas v. Fidelity-Phoenix Fire Ins. Co.*, 103 F. (2d) 329, 331. The Government's argument, based upon an "implication" of acquiescence by Glasser is without merit in view of the well-established rule of this Court that it will " 'indulge every reasonable presumption against waiver' of fundamental constitutional rights and * * * 'not presume acquiescence in the loss of fundamental rights'." *Johnson v. Zerbst*, 304 U. S. 458, 464; *Aetna Ins. Co. v. Kennedy*, 301 U. S. 389, 393; *Hodges v. Eaton*, 106 U. S. 408, 412.

Moreover, in thus picking an explanation out of thin air the Government at the same time recognizes that Glasser had given notice to the court that he did not waive his right to exclusive representation by counsel of his choice unhampered by conflicting interests. Any purported or seeming waiver by Stewart was not within the scope of his authority from Glasser. Indeed, in even considering the retainer by Kretske, Stewart's interest in the possible fee placed him in a position conflicting with his duty to Glasser as to this particular question.

The Government concludes its point with the statement that "Glasser can point to nothing in this record covering a month-long trial * * * which shows that he was prejudiced by the fact that Stewart also represented Kretske" (Gov't Br. 62), but Glasser has set forth item after item of prejudice (Pet. Br. 31-37) and, moreover, this Court adheres to "the well-settled rule that an erroneous ruling which relates to the substantial rights of a party

is ground for reversal unless it *affirmatively* appears from the whole record that it was not prejudicial." *McCandless v. United States*, 298 U. S. 342, 347, and cases cited. Nor does it avail the Government to attempt to minimize the prejudice to Glasser, for "the constitutional question cannot thus be settled by the simple process of ascertaining that the infraction assailed is unimportant when compared with similar but more serious infractions which might be conceived." *Patton v. United States*, 281 U. S. 276, 292; and see *Tumey v. Ohio*, 273 U. S. 510, 535.

VI.

The Argument of the Government as to the Evidence Makes Reversal Mandatory.

(Pet. Br. 72-78; Gov't Br. 11-32.)

A. *The Concessions of the United States Require Reversal Under Established Principles of Law.*

The Government at the outset of its argument makes the broad concession (Gov't Br. 12):

It is not our contention that the evidence precluded a verdict of innocence, or that it compelled a conviction. (Emphasis added.)

It is well-established that, where the evidence in a case is as consistent with innocence as with guilt, a conviction cannot be sustained. *Bishop v. United States*, 16 F. 2d 410, 417, and cases cited; *Karchmer v. United States*, 61 F. 2d 623. The circumstances relied on must not only be consistent with the guilt of the accused but must be inconsistent with every other reasonable hypothesis. *Paddock v. United States*, 79 F. 2d 872, 875-876; *Kassin v. United States*, 87 F. 2d 183, 184; *Cox v. United States*, 96 F. 2d 41, 43. In *Cochran v. United States*,

41 F. 2d 193 (C. C. A. 8), the Court had before it a concession by the Government practically identical with that here involved, i.e., "the jury could have acquitted him [the defendant] without being inconsistent with the record"; and the Court said (p. 206):

"If, as conceded by counsel for the government, the jury might have acquitted him without being inconsistent with this record, then the circumstances proved are not inconsistent with the theory of his innocence, and his guilt has not been proven by substantial evidence beyond a reasonable doubt. The lower court should have granted his motion for a directed verdict."

Thus the Government has conceded its case by its disavowal of any "contention that the evidence precluded a verdict of innocence" (Gov't Br. 12).

B. The Circumstantial Facts in Evidence and All Facts That May Be Reasonably Inferred from Them Fall Far Short of Excluding the Hypothesis of Innocence, and the Verdict Thereon Was Obviously Founded on Pure Conjecture and Speculation.

The petition for certiorari challenged the Government to point to any evidence in the record which might properly be regarded as showing any connection between Glasser and the alleged conspiracy (Petition for Cert., p. 49). In his main brief, petitioner has pointed out the established principles by which sufficiency of evidence in conspiracy cases is to be weighed (Br. 73-75) and the Government has in no way questioned the correctness of that statement. Petitioner again said in his brief on the merits (Pet. Br. 78):

"If it can, let the Government select any one or more prosecutions handled by the petitioner which it may choose, together with a careful statement of the cir-

cumstantial facts adduced and all facts which it deems such facts to prove. If upon such a statement, it appears that the ultimate fact of Glasser's guilt of conspiracy may be inferred from such circumstantial facts in evidence, then petitioner will confess the point."

In response, the Government has now (1) produced a 54-page appendix which, while reflecting long study and an admirable degree of industry, merely purports to restate some³ of the circumstantial evidence adduced as to each case handled by Glasser and (2) a purported summarization of the evidence as to certain of these cases and incidents (Gov't Br. 13-31) which includes (3) its argument as to the probative value of the circumstantial facts so summarized (Gov't Br. 30-31).

The Government concedes that circumstances as to no single prosecution are sufficient to sustain the verdict.—In its summary (Gov't Br. 31) the Government states its argument. First it admits that "no single case and no single incident compel the conclusion of Glasser's guilt," but then it argues that "nevertheless the cumulative effect is considerable." The Government thus concedes that, with regard to each of the prosecutions handled by Glasser, the prosecution has failed to supply in the chain of circumstances some one or more links essential to "compel the conclusion of Glasser's guilt."

As pointed out above, unless the chain of circumstances compels the conclusion of guilt and is inconsistent with any hypothesis of innocence, the circumstantial evidence has no probative weight whatsoever. For when evidence is consistent with either of two inconsistent hypotheses, it establishes neither. *Stevens v. The White City*, 285 U. S. 195, 204; *Gunning v. Cooley*, 281 U. S. 90, 94; *New York C. R. Co.*

³ Petitioner does not concede that it states all the relevant facts as to each case, and foregoes detailed consideration of the innuendoes and conjectures which appear in the footnotes to this appendix.

v. *Ambrose*, 280 U. S. 486, 490; *Chicago, M. St. P. Ry. Co. v. Coogan*, 271 U. S. 472, 478. *A fortiori*, in criminal cases where the presumption of innocence obtains and the guilt of the accused must be established beyond a reasonable doubt, the inference of innocence is required to be adopted rather than the inference of guilt, even though (as is not true here) the latter be equally tenable.

The cumulation of non-probative and unrelated sets of circumstances cannot create substantial evidence.—Moreover, the Government admits that, in each chain of circumstantial evidence as to each prosecution handled by Glaser, there are some missing links but argues that “nevertheless the cumulative effect is considerable” (Gov’t Br. 31).

If, by this, the Government means only that there was some ground of suspicion, it is not enough. For the evidence must be substantial and, where the circumstances lead as rationally to the conclusion of innocence as that of guilt, there is nothing to submit to the jury. *Towbin v. United States*, 93 F. (2d) 861, 866-867, and cases cited. If the statement of the Government means that by grouping and considering en masse all of these suspicions, broken strands, and sets of circumstances—which, in each separate case, are admittedly lacking in essential links and therefore form no complete or adequate chain of proof—they lend strength to each other, nevertheless the case for the prosecution still remains nothing more than an accumulation of uncertain innuendoes wholly insufficient to sustain a finding of guilt.⁵

⁵ This effort to cover up lack of probative circumstances by mere volume is confirmed by the fact that the Government here admits that, for some failures of prosecution, “there appear, indeed, to be satisfactory explanation” (Gov’t Br. 12). After naming one such case (Gov’t Br. 12, n. 3) the Government not only fails to point out the others that fall within this concession, but persists in including this very case in its summarization of evidence relied upon (Gov’t Br. 14, 15, App’x 103-105). The transparency of the argument is therefore obvious.

The so-called common pattern of inferences suggested by the Government is not permitted by the circumstances of any one of the cases upon which the Government relies, and there is no direct evidence against Glasser.—The Government asserts that a common pattern “runs throughout the specific cases here involved” (Gov’t Br. 31), and it twice states this pattern in precise words as follows:

(Gov’t Br. 11)

(1) apprehension of violators and investigation of the specific cases by the Alcohol Tax Unit;

(2) presentation of the material uncovered by the Unit to Glasser;

(3) concurrent action by Kaplan or Kretske, directly, or through Horton, to solicit money from the prospective defendants upon the promise that the case would be settled satisfactorily to such prospective defendants, such settlement to be obtained by transmission of the money to Glasser; and

(4) the disposition of the case, handled by Glasser, in the manner promised by Kretske, Kaplan, and Horton.

(5)

(Gov’t Br. 31)

Persuasive evidence of the guilt of the potential defendants . . . was available to Glasser at the time.

Horton . . . displaying a suspicious advance knowledge of the proceedings, sought out the potential defendants. The latter were directed, usually by Horton, to Kretske. Kretske, in turn, suggested his ability to “fix” the case and solicited money, announcing it was to go to Glasser. Kretske then referred the matter to Roth.

Thereafter, except where payment had been refused or where the evidence indicated Glasser found he must proceed because of pressures, the case, in one way or another, died.

Glasser’s inability, on the stand, satisfactorily to explain the history of many of these suspicious cases.

While the Government asserts "direct evidence of the improper actions of * * * Glasser" (Gov't Br. 11) and "direct evidence of * * * Glasser's participation" (Gov't Br. 31), there is in fact no such direct evidence—as the adoption of the Government's "common pattern" theory (Gov't Br. 31), necessarily admits. Moreover, the petition for certiorari (pp. 31-50) thoroughly explores and demonstrates the lack of alleged "direct" evidence.

Indeed, the very statement of the Government's "pattern" discloses that, even if it existed, the Government has no case for it is admittedly based wholly upon suspicions—Horton's "suspicious advance knowledge", the suspicion suggested by the assertion that the cases "in one way or another died", and Glasser's alleged inability "satisfactorily" to explain "many" of these "suspicious cases". But, to demonstrate that even this theory of the Government is specious, petitioner sets forth below an analysis of every one of the cases mentioned by the Government as sustaining its "pattern", from which it clearly appears that there is not the slightest showing of evidence of guilt, wrongdoing, or misfeasance by Glasser.

In reviewing the evidence, there are certain obvious facts: (1) Glasser was not a police officer, and it was not he but the Alcohol Tax Unit that was charged with the duty of investigation and of making reports to him (R. 898). (2) Glasser had no means of advance information as to law violations superior to that of agents in the Alcohol Tax Unit or others who might see the reports as they came to Glasser through the ordinary channels, and the issuance of search warrants was handled entirely by others (R. 949). (3) The phrase "prosecutions * * * died" even has reference to cases in which Glasser obtained indictments on dates only four or five months prior to the time he ceased to handle the Alcohol Tax call on March 20, 1939 (R. 705), so that, in the ordinary course of events, the cases would not have

been, and were not, reached.⁶ (4) Reports from the Alcohol Tax Unit agents are not in themselves evidence and are often inadequately supported by testimony of available witnesses. (5) In many of the cases as to which the Government asserts there was "persuasive evidence of the guilt of the potential defendants" the record shows that during the eleven month period elapsing between the date Glasser ceased to handle these matters and the date of his trial, Glasser's successor Ward, who was also the prosecutor here, also failed to prosecute by indictment or after indictment failed within five months to proceed to trial. (6) And, unless the existence of the conspiracy and Glasser's participation therein are in some way shown by some independent evidence, the alleged statements of Horton and Kretske that in some instances the money was to go to "Red" are not competent and cannot be considered evidence against Glasser. *United States v. Renda*, 56 F. (2d) 601, 602; *Minker v. United States*, 85 F. (2d) 425, 427. See Pet. Br. 73 and cases cited.

There are 18 cases upon which the Government predicates its "common pattern" and eight items upon which it claims direct evidence against Glasser. The Government treats these cases in four groups: (a) "The Hodorowicz Brothers cases" (Gov't Br. 13-22). (b) "The cases involving Kaplan and his associates" (Gov't Br. 22-26). (c) "Other cases" (Gov't Br. 27-29). (d) And "direct evidence" (Gov't Br. 28-30). These are discussed, for convenience of the Court, in the same grouping and numbered consecutively as they appear in the Government's brief, as follows:

⁶ That this is not an unreasonable period of delay appears from the well-known fact that the Attorney General in his annual report has been accustomed to show the number of cases undisposed of within what might be regarded as a normal if not an ideal period of time. In civil cases the norm adopted was six months after issue joined, and in criminal cases six months after the return of the indictment. See Henry P. Chandler, *The Administrative Office of the United States Courts*, 2 F. R. D. 53, 60, 62.

(a) *The Hodorowicz Brothers Cases.*

The Government lists 8 cases involving the Hodorowicz brothers (Gov't Br. 14):

(1) *The 119th Street still (Gov't Br. 15, 98-99).*—The evidence shows merely that one Joppek was picked up and released by Glasser before any of the alleged payments of money were solicited or made (R. 239). It may be assumed, without conceding, that Swanson and Del Rocco paid money to Horton as the Government states (Br. 15) and that Swanson and Del Rocco operated this still (R. 225, 242). The significant fact is that no report was ever made to Glasser by the Alcohol Tax Unit investigators. The inference that Glasser received money is precluded by the fact that he is not shown to have known more than that a minor figure had been arrested in connection with a raid on a still on 119th Street. The case permits of no inferences of advance knowledge through Glasser, or that the case died, or that there was even evidence available to Glasser or anyone else—for the Alcohol Tax agents never submitted a report.

(2) *The Peter Hodorowicz-Walter Hort case (Gov't Br. 15, 99-100).*—It appears that the money in this case was paid to one Miller (R. 307) identified only as a bootlegger (R. 308). There was no advance knowledge by Miller; there was no announcement that money was to go to Glasser; Glasser explained that the Alcohol Tax investigator in the case asked that it be withdrawn from the grand jury (R. 948-949);⁷ and the conclusive fact is that Miller is nowhere in the record shown to have had any relations or even acquaintance with Glasser or any of his alleged co-con-

⁷ That there is nothing inherently suspicious, much less evidentiary of wrongdoing, in the withdrawal of a case from a grand jury is shown by the fact that prosecutor Ward withdrew a case from the May 1938 Grand Jury (R. 600). Indeed, Ward later directed the same grand jury in another case to vote a no-bill after it had voted a true bill (R. 610).

spirators (R. 310). It may be noted that Glasser later convicted Peter Hodorowicz in another case (R. 322).

(3) *The Walter Hort case* (Gov't Br. 16, 100-101).—Here again the payment was made to the mysterious Miller (R. 308-309). To infer that Glasser received the money would be gross conjecture. The defendant was discharged by the United States Commissioner (R. 268, 287) but Glasser did not handle the case (R. 287). Since, as the Government's analysis shows, his name was not even mentioned in connection with the case (Gov't Br. 100-101), there was no occasion for him "to advert" to it in his testimony as the Government contends he should (Gov't Br. 101).

(4) *The Zarratini case*.—The Government, although listing (Gov't Br. 14), does not discuss, this case in the brief proper. See Gov't Appendix, pp. 101-102.⁸

(5) *The Clem Dowiat case*.—The Government admits that there was no arrangement in this case (Gov't Br. 15, note 6). Its narrative (Gov't App'x 102) shows no payment of money. As to the Government's bald assertion that it was a "clear violation" though the grand jury returned a no-bill (App'x 102), it may be noted that the agent told his whole story of the case to the grand jury which voted a no-bill (Gov't App'x 102). The presumption that the grand jury faithfully discharged its duty must prevail. *Cox v. Vaught*, 52 F. (2d) 562, 564. It might well be that the grand jury under its instructions from the judge deemed the evi-

⁸ There is nothing in the record to show what evidence was available against the accused, who had been indicted but was found not guilty. When first questioned as to this matter, Frank Hodorowicz, the sole witness, had no recollection of any conversation with Kretske with regard to it (R. 296). After an adjournment until the next day (R. 301), he gave testimony that he had offered money to Kretske who refused it allegedly because the accused "talks too much" (R. 305). Plainly, part of the theory of the Government to show guilt is the acceptance of money by Kretske. Here, that Kretske did not take money, is as to Kretske anomalous. As to Glasser it shows nothing.

dence (R. 355-356) inadmissible because obtained by search of a car without a search warrant and without reasonable cause to believe that the alcohol thought to be in the car was non-tax-paid. While Glasser presented the case to the grand jury, neither the Government's "pattern" nor any other inference against Glasser may be drawn from the case. The Government's only suggestion is that "Glasser offered no explanation of this case" (Gov't Br. 102). Moreover, it may be noted that Glasser later had Dowiat indicted, and convicted (R. 322, 709).

(6) *The 118th Place still*.—The Government admits that this case is "satisfactorily explained" (Gov't. Br. 12, note 3).⁹ See Pet. Br. pp. 75-76.

(7) *The Stony Island still case (Gov't Br. 17, 20)*.—Glasser obtained an indictment against Anthony Hodorowicz, Swanson and Dowiat a few days before February 16, 1938 (R. 835). Although the case was set for trial on May 5 (R. 836), Glasser testified that he struck the case from the call—not permanently but with leave to reinstate—at the request of Ritter, the investigator in charge of the local Alcohol Tax Unit agents, who stated he lacked sufficient evidence (R. 920). The Government admits that Ritter, though available, was not called to rebut Glasser's statement (Gov't Br. 17, note 11); and the necessary inference is, of course, that if called, his testimony would have been unfavorable to the Government (see cases cited in Pet. Br. 44). The Government complains that the indictment was never brought to trial (Gov't. Br. p. 17), suggests that a report

⁹ The Government's suggestion (App'x. 105, note 8) is that there was evidence from which the jury could have inferred that Glasser advised Kretske to have the defendants claim ownership of the still to support their petition to suppress the evidence. However, the circumstantial evidence points no more to Glasser than to any other Chicago lawyer, for any lawyer of average intelligence could have given such advice and certainly Kretske (who had been an Assistant United States Attorney) did not need it.

by Bailey in April, 1938, supplied the lack of evidence, complains that Glasser did not explain this (App'x. 108-109), and states (Gov't. Br. p. 17):

The three were never thereafter tried on this indictment, and none of the others involved in the still was indicted.

But even suspicion that Glasser was guilty of wrongdoing is removed by the fact that, after Glasser ceased handling the alcohol tax call on March 20, 1939 (R. 705) and as late as the date of Glasser's trial February 6, 1940, the District Attorney's office had not seen fit to reinstate the case for trial (Exhibit 226, introduced R. 1034). The Government's vague reference to "others involved in the still" who were not indicted (Gov't. Br. 17) apparently refers only to Joppek (Gov't. App'x., p. 106), but he died or was killed (R. 237, 769) prior to the seizure of the still (R. 247, 385).

Accordingly, the Government's pattern fails here since the case was merely stricken with leave to reinstate, and the case therefore never "died"; failure to prosecute creates no inference against Glasser, since his successor has not resumed the prosecution and it appears that two of the accused, who were the Government's own witnesses in this case, testified that they were innocent (R. 346-347, 272), while the third did not confess his guilt until long after Glasser left office (R. 236).

(8) *The general investigation of the Hodorowicz group (Gov't Br. 17-22).*—The substance of the Government's argument regarding the Hodorowicz group is: Despite the fact that there was "much evidence of conspiracy as well as of substantive offenses", Glasser did not present to a grand jury any conspiracy cases but presented and secured two indictments and convictions for substantive offenses in what the Government chooses to call "minor" cases. The Government here merely adopts as correct the

view of an Alcohol Tax Unit agent that a conspiracy indictment against a large number, including minor figures and carrying only a 2-year penalty, should have been obtained (R. 709, 706-711). Against this was the deliberate judgment of the District Attorney (R. 903) and Glasser (R. 1004-1005) that it was best to indict the principal figures on evidence showing wholesale dealings (R. 709) for substantive offenses carrying 5-year penalties. Their determinations conformed to the concluding statement of Bailey in his own report on this case (Exhibit 160, introduced R. 712):

Unless the principals involved are severely dealt with, it will be impossible to seriously hamper the illicit violations controlled by them.

The Government's pattern clearly does not obtain here. There was no payment of money; the case did not "die", for Glasser indicted and convicted the principal figures (R. 711); the availability or sufficiency of the evidence for a conspiracy count is at least doubtful since there were no subsequent prosecutions or convictions in this case by Glasser's successor (see R. 1006); and the case was satisfactorily explained by Glasser.

(b) The Cases Involving Kaplan and His Associates.

The Government lists five cases in which Kaplan and his associates were involved (Gov't. Br. 22), as follows:

(9) *The Western Avenue Still (Gov't Br. 22-24).*—The only showing of evidence of guilt in this case to which the Government refers did not become available until long after Glasser left office in April, 1939 (R. 912), *i. e.*, testimony of Raubunas in the trial of Glasser (R. 452-454) and the statement of Raubunas given to Investigator Bailey, October 20, 1939, seven months after Glasser left office (Ex-

hibit 92). Regardless of what was in Exhibit 81A (which was clearly inadmissible, see *infra*, p. 51), the probability that it contained no showing which could be sustained by testimony of available witnesses is best gauged by three facts: (1) No arrests were made at the time of the seizure of this still (R. 918 and Ex. 81A). (2) The report of the Alcohol Tax Unit on this case indicates the dubious character of available witnesses. At page 26 of this report, Exhibit 81A, appears this statement:

It is recommended that Frank J. Hill, Murry Ellis and James Brown be allowed to testify in behalf of the Government at the time this case is called for trial. While they are more or less reluctant witnesses, it is the belief of the investigators that if they are requested to appear at the office of the United States Attorney for the northern judicial district of Illinois before the trial they will testify favorably.

(3) Glasser's successor is shown to have obtained no indictments, although the prosecutor made a shabby effort to create a false inference for the record after the indictment of Glasser by causing the arrest of Louis Kaplan on a complaint issued by the Commissioner on December 15, 1939, the case from time to time being continued until after the trial of Glasser and then by the United States Attorney dismissed on April 12, 1940 (R. 1046-1047).

The Government's pattern here fails in that no suspicious advance knowledge of proceedings is shown; the statement attributed to Kaplan that payments were made to Glasser was made in 1936 (R. 475), 18 months prior to Glasser's presentation of the case to the grand jury (R. 528); the testimony of Raubunas, who made this statement on cross-examination, is repeatedly admitted by the Government to be lacking in inherent credibility (Gov't Br. 23, 30, 118); there is no assertion that Glasser's presentation of the case to the grand jury was improper; that the evidence avail-

able was insufficient is proved by the fact that no indictment was ever obtained by Glasser's successor; and surely there were no circumstances requiring explanation by Glasser beyond his testimony that the evidence was insufficient and required a no-bill (R. 970).

(10) *Spring Grove case (Gov't Br. 23-25)*.—On Glasser's first presentation to the grand jury, August, 1937, the Spring Grove case was withdrawn because Glasser felt Cole, admittedly a key witness (Gov't Br. 124), to be unreliable—as he stated to agent White at that time (R. 530-531, 534, 923-925). In addition, Frett, an important witness expected to corroborate Cole (R. 536-537), failed to appear in response to the subpoena issued for him (R. 532). No evidence appears that the United States Marshals, whose duty it was, had served the subpoena; and there is no showing that the failure of the witness to appear was in any way attributable to Glasser.

On the second presentation, set for October 17, 1937, the grand jury minutes showed that no witnesses were heard (R. 528) apparently because Frett, whose testimony agent White said would corroborate Cole (R. 536-537), still did not appear (R. 532). White thought it a good idea to have corroboration of Cole (R. 534). Of course, Glasser was not responsible for production of witnesses, since that is the duty of the marshal who usually acted with the aid of the agents. The testimony of agent White shows that he listed Frett's name for subpoena each time (R. 532), and there is no showing that Glasser failed to obtain subpoenas for Frett on each occasion.

On May 17, 1938, Glasser, apparently despairing of ever obtaining Frett, again presented the case (R. 532). That Cole then testified to all the material facts within his knowledge appears from the testimony of Cole himself (R. 576) and of the foreman of the grand jury (R. 606, 607-608; see

Pet. Br. 64-65). The Government's citations (Gov't Br. 124) fall short of rebutting this testimony (see Pet. Br. 64-65). Ellis, the grand jury secretary on whose testimony (R. 590) the Government relies to show that Cole testified only as to his illness,¹¹ admitted that the case was twice presented to that grand jury (R. 591). Glasser's belief that Cole was mentally unbalanced and unreliable is confirmed by a perusal of the record of Cole's testimony in this case (R. 571-573), which was so incoherent as to cause the judge to suggest that his testimony before the grand jury be read (R. 572). Defendant's Exhibits 188 and 189 (received in evidence R. 885), which were X-ray photographs of Cole's head, showed gun-shot slugs at the base of Cole's brain (R. 887).¹²

The foreman of the grand jury testified that this May, 1938, grand jury would not indict without evidence which would stand up in court (R. 606) but, if there was evidence sufficient to satisfy them that there was probable cause, they would vote an indictment (R. 608) and that the grand jury used its best judgment as to who to indict and who to no-bill (R. 608).

In an attempt to show wrongdoing by Glasser i.e. that Glasser advised the grand jury concerning whom it should indict, the Government cites (Gov't Br. 24) to the testimony of the Secretary, Ellis, whose testimony commences (R. 589): "*I think we had a conversation with Mr.*

¹¹ The Government also relies on Exhibit 96, stenographic transcript of testimony before the grand jury, to show that Cole was before the grand jury only a few minutes and that Glasser questioned him only about his illness (Gov't Br. 124). Although part of this transcript is shown by the record to have been read in this case by the prosecutor (R. 574), Exhibit 96 is nowhere shown in the bill of exceptions to have been introduced in evidence.

¹² The United States attorney took all exhibits after the trial for the purpose of making a list of them (R. 1094, 1096). When he finally returned the exhibits to the clerk of the district court, these photos had disappeared for the clerk does not include them in his certificate (R. 1075, 1087). See Pet. Br. 55-57.

Glasser as to who would be named in a true bill" (emphasis added). He spoke of not knowing "the exact wording" and of "the inference" as to what Glasser might have said. On cross examination he knew nothing except the name of the case and that Cole was a witness (R. 591-601).

As for the Government's "pattern" here, any suspicious knowledge of proceedings in this case, as the Government's citation shows (Gov't Br. 121 note 16), came from agent White to Kaplan and not from Glasser. Of the eight defendants, only Dewes is asserted to have made the payment of money which Kretske allegedly said would be paid to Glasser. It is plain that the prosecution did not die, for five were indicted by the grand jury upon Glasser's presentation (R. 528-529) and Glasser's failure in the 9 months before he left office to bring to trial these five indicted June 1, 1938 (R. 529) is explained by the fact that Anderson, counsel for one of them, was ill with arthritis from November, 1938, down to the time of Glasser's trial and requested several continuances in addition to those necessitated by the fact that Glasser and the trial judge were busy with other cases (R. 823-824, 826). Kaplan and Raubunas, as well as Dewes—the latter being the only one alleged to have paid money to Kretske—were on Glasser's presentation no-billed, but the fact that Ward, Glasser's successor, was able to obtain an indictment against these three in May, 1939 (R. 489, Exhibit 130, received R. 641) falls far short of showing that Glasser had persuasive evidence available at the time of his presentation. There is no showing that Ward obtained the indictment only on the evidence available to Glasser. For example, there may have become available to him the missing witness, Frett, needed to corroborate the testimony of Cole who was deemed unreliable by the grand jury which returned the other indictments on Glasser's presentation (R. 532, 534, 536-537, 607-608). It may be noted that after obtaining these later indictments as

to Raubunas and Dewes, Ward struck these cases with leave to reinstate, obtaining a plea of guilty from Kaplan only after Glasser's trial (see Pet. Br. 60, note 23). It may also be noted that Glasser himself later had Dewes indicted in the *Beisner farm* case, *infra*, in which Dewes was also alleged to have paid money to Kretske.

(11) *The Boguch removal case* (Gov't Br. 25).—This case was not handled by Glasser but by Assistant United States Attorney D. A. Drymalski (R. 291, 783). The Government seeks to draw an inference of wrongdoing by Glasser from the conflicting testimony which, in any event, at most showed merely that Glasser might have been present in the commissioner's office at the time the petition for removal was dismissed (Gov't Br. 128-129, n. 24). Plainly, the Government's "pattern" does not obtain here; and Glasser is shown to have had no relation whatever to the case.

(12) *The Beisner farm still case* (Gov't Br. 25-26).—Of the seven individuals presented to the Grand Jury by Glasser in the *Beisner farm* case it is true that only three were true-billed. But these included Raubunas and Dewes, who are the only persons asserted by the Government to have paid money to Kretske. They were indicted on November 1, 1938 (R. 697-698) and arraigned December 27, 1938 (Exhibit 156). The case did not die. There is no assertion that Glasser's indictment was bad in form. His failure to try the case in the remaining three-month period before he ceased to handle the alcohol tax call, March 20, 1939 (R. 705) permits of no inference even of misfeasance.

As to the four persons who were not indicted by Glasser but were included in the reindictment obtained by Ward (Gov't. Br. 26, Gov't. App'x. 134), it is pertinent that after trial Farber received a sentence of one hour (R. 696), Widzes was placed on probation (Exhibit 168), and Du-

thorn was found not guilty (Exhibit 168). George Neiss (not Weiss) was not apprehended (Exhibit 168). Glasser's judgment, insofar as it may have influenced the grand jury, was better than Ward's because Glasser avoided indictments which could after the expense of trial produce results no more concrete than these.

There can be no application of the Government's "pattern" in this case, and no iota of suspicion can be drawn from it against Glasser.

(13) *Downer's Grove still case*.—Although listed (Gov't. Br. 22) this case is not referred to by the Government in its argument.¹³

(c) Other Cases

Although inferences therefrom are not discussed, the Government states some of the facts relating to certain "other cases" (Gov't. Br. 27-29), apparently deeming them pertinent, as follows:

(14) *Kwiatowski case* (Gov't. Br. 27).—This case is adequately discussed in the Petition for Certiorari, pp. 44-45, and the petitioner's main brief, pp. 76-78. The Govern-

¹³ The Government's detail of this evidence (Gov't App'x p. 135), however, shows that Glasser indicted Slesur and Wasielewski in this case in December, 1938 (R. 623-624, 630). There was no showing of payment of money by either. Wasielewski stated he overheard Kretske promise Slesur that "he would take care of everything with the 'Red head'" (R. 631). But, as the Government points out (Gov't Br. 135), Glasser obtained Slesur's plea of guilty on March 31, 1939. Wasielewski testified to no payment of money by him or promise of non-prosecution as to him. Failure to try Wasielewski in the short three-month period between indictment in December, 1939, and the date Glasser ceased to handle the Alcohol Tax call (R. 705) can properly be attributed only to the condition of the court calendar and the press of business in the United States Attorney's office and not to misfeasance by Glasser. For Glasser's successor Ward, even after Slesur's confession, failed for 8 months to prosecute Wasielewski before December 5, 1939, when he pleaded guilty; and Ward admitted that as to certain of the other defendants in this case, he struck the cause from the docket with leave to reinstate (R. 630).

ment bases its inference of Glasser's guilt in this case on the fact that the statement prepared by Agent Bailey of the Alcohol Tax Unit and read by Prosecutor Ward to the jury (R. 412-414) contains a statement that Kwiatowski gave \$600 to Horton after which Horton is alleged to have said "Don't be afraid, I'll fix it" (R. 413). But Kwiatowski on cross-examination was asked if he gave Horton \$600 to fix his case, to which he answered, "No, I no give him" (R. 415).

The Government refers (Gov't Br. 27) to a supplemental report by agent Goddard dated December 8, 1938; but that report is shown only to have been made to Ritter, the Investigator in Charge of Agents (R. 585, 918). There is no showing of mailing or other transmission to, or receipt by, the office of the United States Attorney.¹⁴ Glasser's denial that he received it is uncontradicted (R. 963). Furthermore, assuming *arguendo* that Glasser had this report, he ceased to handle the Alcohol Tax call about four months later (R. 705) and still another three months passed before Ward, who succeeded Glasser in handling the alcohol tax call, finally presented the case to a grand jury in June, 1939 (R. 430). Since a total of seven months elapsed before the matter was in the ordinary course of business, presented to the grand jury,¹⁵ no evidence of guilt or misfeasance on Glasser's part can be inferred from this case.¹⁶

¹⁴ There has been suggested no ground for invoking a presumption that in the ordinary course such a report, if made to the Investigator in Charge, would be transmitted to the office of the United States Attorney. Such a presumption, if it were attempted to be invoked, must necessarily fall in view of the positive testimony of Judge Barnes to the suppression of a report submitted by an agent but not transmitted to the office of the District Attorney (R. 719-720).

¹⁵ See note 6, page 24, *supra*.

¹⁶ The record further shows that Ward obtained the indictment June 2, 1939; but Kwiatowski was never even arrested, and on January 12, 1940, the case was stricken with leave to reinstate (R. 430). This curious course of events is explained by the fact that 14 days after the indictment

(15) *Abosketes matter (Gov't Br. 28)*.—The Government's statement of the *Abosketes* case in the argument is meaningless and shows utterly no connection with Glasser. It plainly intends to rely on the facts stated in the Government Appendix, pp. 137-139. The inference apparently sought to be drawn is that, when Glasser with Bailey visited the prisoner Brown, at the county jail, he learned of the prospect of prosecution of *Abosketes* and inspired Brantman to solicit money from *Abosketes* to "fix" the case. But see the opinion of the Circuit Court of Appeals (R. 1127) and Petition for Certiorari, pp. 45-46, showing that Brantman first approached *Abosketes* prior to the date of the first trip of Glasser and Bailey to see Brown. The Government, contrary to all precedent, attacks the testimony of its own witness *Abosketes* to the effect that he first met Brantman on February 20 or 22 (Gov't App'x 140, n. 32), because this is at least one day prior to the day (February 23) on which Bailey first told Glasser that he had received a letter from Brown in the county jail and accompanied Glasser to the jail where they conversed with Brown concerning a law violation by *Abosketes* (R. 647-648, 941). But even if it be conceded that the Government's own witness was mistaken as to the dates and that it may be inferred that Glasser may have known of the impending prosecu-

and on June 16, 1939, investigator Bailey obtained an amazingly lucid statement (R. 412-414) from the accused who could not read English or understand the language of the statement (R. 416-417). The gist of this statement was the payment of money to Horton (R. 412-414). But the Government could not obtain oral testimony to this effect (R. 409-412) and on cross-examination this witness denied payment to Horton (R. 415).

While it was naturally impossible for Glasser on this trial to show the unconscionable means to which the Government in many instances resorted in obtaining what little evidence it did adduce, this case clearly shows the use of indictment as a means of extorting testimony from a witness and holding the witness to his story. Further evidence of the actions of Alcohol Tax Unit agents in attempting to secure testimony against Glasser is referred to in the Petition for Certiorari, p. 49, note 10, and appears in the record (R. 583-585).

tion of Abosketes before Brantman made his alleged solicitation of money from Abosketes, it is only too obvious that inferences may also be drawn that Brantman received his information from almost anyone other than Glasser, or from any one of the prisoners in the jail (12 of whom, incidentally, had been convicted by Glasser and were familiar with Abosketes) particularly since the record shows that at least one of them informed his wife of Brown's conversation with the "Federal people" on the same day that Brantman solicited Abosketes (R. 669). Moreover, a much more reasonable hypothesis that Bailey, rather than Glasser, was guilty of inspiring the solicitation arises from the facts that: (1) Bailey received the letter from Brown on February 21 and on that day went to see Brown but was unable to see him in private (R. 647). (2) Abosketes was approached by Brantman on February 20 or 22 (See Pet. for Cert. 45-46.) (3) Bailey failed to take the initial step which would start prosecution, for he transmitted no report on the matter to the office of the United States Attorney (R. 940). (4) Later other representatives of the Alcohol Tax Unit suggested that Glasser close the Abosketes matter by permitting Brown and the other prisoners to go to the penitentiary from the county jail where they had been temporarily held (R. 1022, 1624).¹⁷

If any inference or "pattern" is to be found in these circumstances, it is that Bailey, not Glasser, inspired the solicitation—or at least that any one of many people might have inspired Brantman. Moreover, no case "died" because the Alcohol Tax agents made no report and no prosecution, therefore, could be instituted. And, while money

¹⁷ Not entirely without significance under these circumstances was the visit to Glasser's office by Herrick, assistant to Yellowley, head of the Alcohol Tax Unit (R. 443), apparently made for the sole purpose of personally delivering to Glasser an alleged threat of Abosketes to kill Glasser if he persisted in his attempts to obtain evidence against him (R. 941-942).

passed between third parties who were Government witnesses, they did not mention Glasser in connection therewith and in fact testified that they did not know him (R. 656, 668).

(16) *Case of Leo Vitale (Gov't Br. 28)*.—Vitale, represented by one Spatuzzo, pleaded guilty to an indictment for running a still on the farm of Charles Meyers (R. 250-251, 441). There is no suggestion that any money was paid in this case; the defendant was represented by neither Roth nor Kretske and neither these nor any of the other alleged co-conspirators are shown to have had any relation to the case; neither is there any suggestion of any corrupt motive for anything Glasser did or omitted to do in connection with this case. Glasser was not on trial for misfeasance in office or for conspiracy with Leo Vitale or his lawyer, Spatuzzo. Since no legitimate line of presumptions could in any way relate this case to the conspiracy, either to show its existence or as an act in furtherance thereof, it was plainly incompetent. *Boyd v. United States*, 142 U. S. 450, 458. The Government's only complaint is that Vitale's sentence was only an hour in the custody of the marshal which Glasser, who prosecuted the case, "could not subsequently explain" (Gov't Br. 28), but Glasser did explain that Vitale had been convicted in the State court for the same offense and it was the policy of the United States Attorney's office not to prosecute for the same offenses in the Federal courts (R. 916; Ex. 208 introduced at 953).

(17) *Libel action against the Chrysler car of Rose Vitale (Gov't Br. 28-29)*.—The civil action against the automobile of Rose Vitale arose out of the search of the residence of Leo Vitale in Peru, Illinois, on August 21, 1938, under a search warrant (Exhibit 36). It was tried before Judge Barnes on December 23, 1938 (R. 218-219). Rose Vitale, the wife of Leo Vitale, was the claimant as owner of the car

(R. 222; Exhibit 36). Exhibit No. 36, found in an envelope marked Ex. No. 229, includes a letter transmitting a report on the case. This letter, signed by Yellowley, states:

There is enclosed report of investigation by Investigator Barratt O'Hara, Jr., dated December 14, 1938, in regard to the merits of the claim of Rose Vitale, 122 E. 11th Street, Peru, Illinois.

Exhibit No. 36 also includes the report thus transmitted. The case was tried upon this report (R. 717) as was the frequent practice (R. 718). The report was read to Judge Barnes by Glasser (R. 873, 717). Judge Barnes ordered the car returned to the claimant because, as he testified, the report was not a sufficient showing upon which to forfeit the car (R. 717-718). The complaint of the Government is that, although agent Dowd had reported to Glasser that Vitale had boasted that "he got out of this for nine hundred dollars" and that Dowd had interviewed a number of witnesses to whom Vitale spoke, Glasser took no action (Gov't Br. 29, App'x 147-148). This argument attributes to Glasser an investigatory duty, which was not the function of his office (R. 898) and even reports that came to the office of the United States attorney were referred to the Alcohol Tax Unit for investigation (R. 898). It is thus highly significant that neither agent Dowd nor any other agent or officer of the Alcohol Tax Unit placed sufficient credence in this rumor to make an investigation or report on the matter. Indeed, in view of the fact that Exhibit No. 36 shows that the Alcohol Tax Unit valued the Chrysler car at only \$450, Dowd's suggestion that investigation be made of a rumor that Vitale had paid \$900 to get out of this case tended only to raise grave doubt as to the probability that Vitale would have paid twice its value to save the car. Conclusive here is the fact that there is no evidence upon which to found any inference that any money was ever

paid to anyone to "fix" the case, for certainly the hearsay rumor to which Dowd testified cannot be treated as proof of more than the fact that such a rumor was reported to him and even the rumor did not implicate anyone. There is thus nothing in this case from which to infer that the conduct of Glasser therein tended to further the alleged conspiracy, much less does it afford basis for inferring that he had knowledge of, and was party to, any agreement unlawful or otherwise.

(18) *The Wroblewski brothers cases*.—The Government refers to these cases (Gov't Br. 27) but does not discuss them in argument. Reference to Gov't Appendix, pp. 149-152, shows nothing in the Government's discussion of them tending to show that Glasser had any possible connection with the alleged conspiracy.

(d) "*Direct Evidence*" of the Participation of Glasser.

Under this misleading heading (Gov't Br. 29) the Government sets out references to items of evidence (Gov't Br. 30-31) none of which involves testimony by the witnesses of their own knowledge of the fact to be proved—participation of Glasser in the alleged conspiracy. These testimonial statements hence fall far short of being "direct evidence". *United States v. Greene*, 146 Fed. 803, 824; *People v. Palmer*, 11 N. Y. St. Rep. 817, 820; *State v. Riggs*, 61 Mont. 25; *State v. Blackwelder*, 182 N. C. 899; *State v. Gatlin*, 170 Mo. 354; 1 Greenleaf, Evidence, sec. 13. Indeed, they fail to ascend even to the dignity of circumstantial evidence since no one of them gives rise to a legitimate inference of such participation by Glasser. These may be considered *seriatim*, as follows:

(1) *Kretske's alleged statements that payments of money were to go to "Red"* (Gov't Br. 30).—As its first item of direct evidence, the Government points to state-

ments of its witnesses that Kretske said that money he received from defendants or prospective defendants would be paid to "Red" (Gov't Br. 30). Kretske never said he paid over any part of these moneys to Glasser. The most the Government shows is that third-party clients of Kretske testified that Kretske so intimated to them. Thus, not only was their testimony plain hearsay as against Glasser, but such statements made outside the presence of Glasser could of course never constitute direct evidence. They are not even circumstantial evidence, and were incompetent to prove anything against Glasser unless and until, by some independent evidence, it was first shown that he had joined in the alleged conspiracy so as to make Kretske's statements those of a co-conspirator and his statements binding against all the conspirators.

(2) *Testimony of Raubunas that he saw Glasser with Kretske and Kaplan (Gov't Br. 30).*—Raubunas testified that meetings of Glasser and Kretske with Kaplan took place in May, August, and October, 1936 (R. 457-458, 462). In the first place, the Government admits that testimony of Raubunas was subject to a "probable lack of inherent credibility" (Gov't Br. 23) and that Raubunas here testified "perhaps not entirely convincingly" (Gov't Br. 30). In any event, it is clear that knowledge of the conspiracy among the other defendants cannot be inferred from casual and unexplained meetings with such other defendants who are convicted of conspiracy. *Falcone v. United States*, 311 U. S. 205, 210. It may also be noted that Raubunas, at the time of the trial, was serving a three-year sentence after conviction on an indictment obtained by Glasser (R. 452, 697-698).

(3) *Svec's testimony as to facts "indicating" meetings between Glasser and Yarrio (Gov't. Br. 30).*—Paul Svec's testimony "indicating" meetings between Glas-

ser and Yarrío, a bootlegger indicted but never convicted,¹⁸ (R. 563-564) was that sometime between August 1937 and June 1938 he had seen Glasser twice drive by a barber shop and sound his horn, whereupon Albert Yarrío (R. 194) looked out the window, saw a green Buick rolling by, left the barber shop in the same direction in which the car went and returned in five or ten minutes.¹⁹

Suggestion that this evidence indicates a meeting would require an inference that Yarrío left the barber shop on signal from Glasser and upon this inference the piling of a second inference that such a meeting took place, a course of reasoning recognized in no court. And, assuming *arguendo* that these meetings took place, they are not only meaningless and of no legal significance (*Falcone v. United States, supra*), but Yarrío had utterly no connection with the alleged conspiracy here. Again assuming that there were such meetings, it is plain that they could have had nothing to do with the indictment of Yarrío to which the Government refers (Gov't Br. 30) since that was dismissed on April 1, 1936 (R. 195) more than 18 months earlier, and there is no suggestion that Yarrío had any connection or relation with any of the alleged conspirators or did any act which furthered the conspiracy. Moreover, according to the testimony of one of the Government's own witnesses, an F. B. I. agent, Svec had earlier admitted that in fact he had never seen Glasser outside the Federal Building with Yarrío, alias Alberts, or otherwise (R. 583-584); and in his cross-examination Svec stated that he had then spoken "truthfully" (R. 566).

(4) *Alleged apology, and advice on attorney, to Hodorowicz (Gov't Br. 30).*—The Government insists (Gov't Br.

¹⁸ The record shows without contradiction that this indictment was dismissed for want of prosecution because the witness could not identify Yarrío (R. 931, 979).

¹⁹ Stricken was Svec's testimony that Yarrío at the time said, "That is Red, I guess I have to go see him" (R. 563, 569; Gov't Br. 86).

30) that "Glasser, after Frank Hodorowicz had been indicted, apologized to Frank" and "advised him on a choice of his attorney." Far from showing any apology, the Government's citations to the record show that Glasser flatly told Hodorowicz he would have to go to jail for five years (R. 302). Glasser's statement that "Bailey says he will get my job if I don't put you [Hodorowicz] away" was by Bailey's own testimony spoken in jest in the public corridor of the courthouse in the presence of Bailey and others (R. 716). Nor is there any support for the Government's suggestion that Glasser explained he would have to convict Hodorowicz "because the situation was becoming uncomfortable for Glasser" (Gov't Br. 30). The statement above-quoted as to Bailey and Glasser's further statement that Bailey was after him all the time (R. 304) fall far short of supporting the Government's purported epitomization. Glasser's statement that if it had been an ordinary case it could be handled differently (R. 304) is directly referable to the testimony of both Judge Igoe and Glasser that if possible, and because of his notoriety as a large-scale violator, they intended to convict Hodorowicz on a long-term substantive count rather than a mere two-year conspiracy count (R. 891-892, 1004).

Glasser's alleged advice to Hodorowicz concerning choice of attorney consisted in saying that of three mentioned by Hodorowicz, "any one of them are alright" (R. 303). Apparently included was Hess (R. 302) and Glasser said "Hess could do a lot of good" (R. 303)²⁰ but, Hodorowicz testified, Glasser also said (R. 303-304) that

For all the money in the world you can't do anything on this case. * * * For all the money in the world he [referring to Hess] can't do you no good this time.

²⁰ There has at no time been any suggestion that attorney Hess was in any way connected with the alleged conspiracy. Glasser's open recognition that he could be of assistance to Hodorowicz as compared with Roth, whose services Hodorowicz dispensed with, contradicts any theory of conspiracy with Roth as charged by the Government in the present case.

Plainly there is no basis here upon which to found an inference of wrongdoing, much less wrongdoing in furtherance of any conspiracy, by Glasser who, instead, plainly stated that the prosecution would be relentless.

(5) *Glasser's expulsion of Dowd from the court room in the Rose Vitale libel case.*—It is plain that Glasser's action in ordering Dowd from the courtroom in the Rose Vitale libel case, to which the Government refers (Gov't Br. 30), can be no indication of participation in the alleged conspiracy. To insist, as the Government does (Gov't Br. 30), that it is evidence thereof is frivolous. Neither does the testimony as to the occasion for Glasser's action have greater probative value. Dowd's request that Glasser put him on the stand to show "what kind of a man this fellow is" (R. 220) conveyed to Glasser no idea that Dowd had any knowledge of facts, other than those shown in the report, relevant to the sole issue before the court—whether Leo Vitale or any other person had used the car for the purpose of defrauding the revenue. Judge Barnes, who tried the Vitale libel case, testified for Glasser that he already knew "the claimant was the wife of the bootlegger" (R. 717) and that he, the court, "had no more right to take that car than * * * to take yours" since there was no sufficient evidence (R. 718, 717-718). Certainly, this incident is evidence, direct or otherwise, of nothing respecting the alleged conspiracy.

(6) *Glasser's "release" of Joppek (Gov't Br. 30).*—It is sufficient to note that the release of Joppek by Glasser on February 29, 1937, when he was picked up in connection with the 119th street still because he had signed the lease and paid the rent on the premises (R. 249-250) occurred prior to the alleged payment of money to Horton by Swanson and Del Rocco (R. 228, 239). As shown above, no report was ever made by the Alcohol Tax Unit so that Glasser

could undertake no prosecution. The only proper inference here then is that the agents concluded they did not have enough evidence against anyone to justify a report in this case. If it is to be inferred that money was paid to any law enforcement officer and resulted in the "fixing" of the case, then it must have been paid to the agents who declined to make a report which would have enabled Glasser, as the representative of the United States Attorney's office, to proceed with a prosecution. Certainly there is no evidence of conspiracy by Glasser—direct, circumstantial, or otherwise.

(7) *Glasser's "release" of Raubunas on Christmas eve (Gov't Br. 30-31).*—Raubunas was picked up on December 24, 1936, by Agent Campbell and brought to Glasser. After conference between Campbell and Glasser beyond the hearing of Raubunas, Glasser stated to Raubunas (R. 464):

I guess it be alright to let you go today, day before Christmas. Come over Monday, 10:00 o'clock.

But this was merely Raubunas' testimony. He said he was in the custody of Campbell, an agent of the Alcohol Tax Unit. Glasser had no control over him. The remark, if made by Glasser, was apparently acquiesced in by Campbell. Neither Campbell nor any other representative of the Alcohol Tax Unit complained, though Campbell himself testified for the Government on other matters (R. 444-452).²² There was no report to Glasser on Raubunas. There was no

²² There was every reason why Campbell should have testified if he felt anything amiss in this situation, for the record shows that Kaplan told Raubunas not to return to the Federal building after Raubunas told Kaplan that Campbell, not Glasser, had asked him to return (R. 464). Earlier in the same month Kaplan had warned Raubunas that Campbell was looking for him and had instructed Raubunas not to say anything to anybody (R. 463), which could not have come from Glasser since the report on the Western Avenue still case did not reach Glasser until July 1937 (Ex. 81, received R. 529).

case or proceeding of any kind pending in the United States Attorney's office against Raubunas at that time. The whole incident, if it ever occurred, is nebulous and is far from constituting any "release" of Raubunas by Glasser as the Government implies (Gov't Br. 30-31). Indeed, elsewhere the Government in its brief (pp. 23, 30, 118) repeatedly insists that Raubunas' testimony was without "inherent credibility" (Gov't Br. 23).

(8) *Glasser's "receipt and acceptance" of a case of liquor sent by Frank Hodorowicz.*—Finally, the Government with something of a flourish states that "there is uncontroverted evidence that Glasser received and accepted a case of liquor sent to him for Christmas by Frank Hodorowicz" (Gov't Br. 31). It is true that Hodorowicz testified that he had sent a case of liquor to Glasser on Christmas 1937 (R. 302); but as a matter of fact Glasser freely admitted that an anonymous gift of liquor had arrived at Glasser's office in the Federal building where it was opened by him "and . . . passed . . . out to my associates" (R. 950-951). Glasser was not cross-examined on the incident or his explanation (R. 954-1027). There was nothing clandestine about it so far as Glasser was concerned. That the receipt of this liquor was nothing more than an anonymous gift to a public officer and is wholly without significance here is demonstrated by the fact that Glasser later had the Hodorowicz brothers and their nephew indicted and convicted (R. 322).

Conclusion.—It is obvious that none of the cases to which the Government refers and which it purports to summarize by pattern (Gov't Br. 31) involves circumstances which may properly be said to constitute evidence from which the jury could as a matter of law draw any inference of guilt of Glasser.

Bereft of any direct or other evidence implicating Glasser, the Government adopts the theory that 18 cases handled by Glasser show what it calls a "common pattern" of circumstantial evidence as follows: (1) Apprehension of liquor law violators and a report thereon to Glasser; (2) followed by solicitation of funds from the accused persons by Kretske, Kaplan, or Horton, to be paid to Glasser; (3) thereafter the disposition of the cases favorably to the accused who had so paid money to Kretske, Kaplan, or Horton, and (4) no satisfactory explanation by Glasser as to the disposition of the cases. But, upon undisputed evidence, every one of these cases discloses one or more absurdities in the Government's claim of a so-called "common pattern". In three of them the Alcohol agents never even made a report to Glasser; in four of them Glasser did not even handle the cases; in nine of them there was not even a hint of solicitation or payment of money to co-defendants Kaplan, Kretske, or Horton, the alleged co-conspirators, directly or indirectly; three of them were suspended at the request of the Alcohol agents; in two of them the court found the evidence not sufficient; in six instances the accused was later indicted or convicted by Glasser; in four, the accused pleaded guilty; in two of them Glasser left office before the case could be tried; and in three adequate evidence was not supplied until after Glasser left office. Thus, for one or more reasons, the Government's "common pattern" is not only untenable but absurd.

Glasser handled more than a thousand formal cases in the District Court in his four years in office (R. 965-966) and unnumbered additional cases before grand juries, United States commissioners, in the United States Attorney's office, and before the Circuit Court of Appeals. From this volume of business the Government has selected the 18 so-called "pattern" cases listed above and the 8 instances of so-called "direct" evidence of wrongdoing by

Glasser—none of which raises more than a poor suspicion at most, and all of which are not merely satisfactorily but conclusively explained to Glasser's credit.

Glasser did nothing that an innocent man might not do. Upon the merits, therefore, his conviction is a plain miscarriage of justice.

VII.

The Conduct of the Trial Judge Was Highly Prejudicial to Petitioner's Right to a Fair Trial

(Pet. Br. 37-54; Gov't Br. 67-81).

The Government cannot avoid the misconduct of the judge on the ground that insufficient exceptions were taken.—As to the misconduct of the trial judge, the Government first seeks to avoid the questions raised, on the ground that the accused did not properly preserve the error. But, at the outset, it is to be noted that the cases cited by the Government are not precedents for the proposition that failure to object to the actions of the judge in any way bars this court from considering clear error. Thus, in *Troutman v. United States*, 100 F. 2d 628, 634, cited by the Government itself (Gov't Br. 68), the court added:

Where life or liberty is involved, an appellate court may notice and correct a serious error which was plainly prejudicial without it being called to the attention of the trial court, and even though it is not presented by assignment of error.

The same principal applies in this Court, *United States Supreme Court Rules* 26(7); *Weems v. United States*, 217 U. S. 349, 362; *Wiborg v. United States*, 163 U. S. 632, 658, and has peculiar application where basic rights, such as the right to fair trial, are involved. *Weems v. United States*, 217 U. S. 349, 362. And that it has special application to misconduct of the trial judge was recognized in

Adler v. United States, 182 Fed. 464 (C. C. A. 5) where the court said (p. 472):

Defendants counsel is placed at a disadvantage, as they might hesitate to make objections and reserve exceptions to the judge's examination, because, if they make objections, unlike the effect of their objections to questions by opposing counsel, it will appear to the jury that there is direct conflict between them and the court. * * * And the judge can more easily treat counsel with the respect due an officer of the court in the performance of a duty, if he avoids the performance of the duties incumbent properly upon an attorney representing one side of the case. The evidence, taken as a whole, might be so conclusive of the defendant's guilt that an appellate court would not be justified in interfering with the judgment on this account alone. But in a case where there is substantial conflict in the evidence as to the essential points that were required to be submitted to the jury, the course of the judge in unnecessarily assuming to perform the duties incumbent primarily upon others might make it the duty of an appellate court, on this ground alone, to grant a new trial.

Recognizing this same principle, in *Williams v. United States*, 93 F. 2d 685, 690, the court said:

Counsel are not held to strict accountability for failure to object or except when the questions are asked *by the court*.

The intentions of the judge, even if they could be known, are immaterial.—In the margin of the text of its brief stating unquestioned rules governing the conduct of trials by federal judges, the United States presents its interpretation and summarization of the record of the judge's conduct in this case. While, in at least one instance, the Government concedes that the trial "court fell into error" (Gov't Br. 71 note), it first seeks to excuse the conduct of the judge

on the ground that it was "based upon a mistaken assumption", that his actions were not "deliberately calculated to prejudice" defendants and that the court was "confused" (Gov't Br. 71), and that his differentiation in dignity of witnesses "may have been passed in jest" (Gov't Br. 75). Whether the district judge intended to be unfair, of course, has no relevance as to the degree of prejudice suffered by the defendants which is the sole question here. *Hunter v. United States*, 62 F. (2d) 217, 220; *Williams v. United States*, 93 F. (2d) 685, 694. Moreover, neither petitioner nor this Court can read the trial judge's mind as of two years ago. It is the effect of his acts, not his intent, which governs here.

The errors in the conduct of the trial judge cited in petitioner's main brief, with the Government's replies thereto, may be considered in the following order:

1. *The trial judge erroneously admitted highly prejudicial hearsay reports, Exhibits 81A and 113 (Pet. Br. 37-42; Gov't Br. 63-67).*—The trial court's admission into evidence of the hearsay reports contained in Exhibits 81A and 113 is undoubtedly a most far-reaching error of the trial court. The Government admits that the reports of the Alcohol Tax Unit agents "contained the statements of persons who had given the investigators information connecting the accused with the stills" (Gov't Br. 65). That such statements are hearsay is undeniable since, within the classic definition, they derive their value, not from the credit to be given to the witness himself (the testifying agent) but on the veracity and competency of other persons, i.e. the persons who had given the statements to the agents. The hearsay rule rigidly excludes such statements, and there is not the slightest suggestion from the Government that they come within any recognized exception to the hearsay rule. *Hopt v. Utah*, 110 U. S. 574, 581; 1 Greenleaf, Evidence sec. 99.

The Government first asserts that the reports were admitted with the consent and agreement of Glasser's counsel (Gov't Br. 65). But the Government admits (Gov't Br. 65-66, n. 3), that Stewart, for a space measured by three pages of the record, argued (emphatically and cogently) that an Alcohol Tax Unit agent's statement of the results of an investigation, so far as it constituted merely his conclusions from what somebody else told him, would be inadmissible because it amounted to mere hearsay. And while Glasser, as a matter of law, could not have used such reports in submitting cases to grand juries, the jury in Glasser's trial would not know this (R. 445-448).²³ That the precise point was made to and recognized by the court, appears from the following (R. 448):

Now, if Your Honor is just going to permit the Government to put a witness on who gives hearsay evidence to establish Kaplan was the owner of the still, then show the Grand Jury No Billed the case, and then Mr. Ward will argue to the jury that Mr. Glasser had a good case, the Jury does not know Mr. Campbell [the Alcohol Agent who made the report] wouldn't be permitted to testify, and all of this before the Court, if Kaplan were put on trial. That is my point.

The Court: Well, I think in your examination of *your witnesses* you ought to ascertain just what evidence *they* had, and required, in reference to this still, and which was furnished to Mr. Glasser. (Emphasis supplied.)

²³ The references in Stewart's argument to the example of Boguch (R. 447, 451) were to bring out the contrast between evidence available at Glasser's trial and the mere reports of Alcohol Tax investigators which alone and unsubstantiated may have been all that was available to Glasser at the time of his handling of the Alcohol Tax cases for the Government. Boguch, alias Ralph Sharp, had earlier testified that he informed no Government man as to his connection with the Western Avenue and Spring Grove stills until 1940 and the only grand jury to which he gave information as to his employer (Kaplan) was the grand jury investigating Glasser (R. 379, 377). Thus Glasser did not have available these later testimonial statements by Boguch.

Nevertheless, the Government relies on two statements of Stewart, both excised from a context which conclusively shows that he at all times vigorously asserted for his client the right to be tried on no hearsay evidence and the right to confront the witnesses against him. The first is Stewart's statement that the agent's report, Exhibit 81A, would sum up the information the agent had with relation to the still (R. 449). But this was obviously limited to facts of which the agent personally knew, as amply appears from Stewart's further statement at the next page of the record (R. 450):

May I say this, Your Honor? Conversation with the Investigator, Mr. Campbell, would give Mr. Glasser about what Mr. Campbell learned, wouldn't do Mr. Glasser any good unless Mr. Campbell had witnesses that were available, that is the point.

The second statement by Stewart upon which the Government relies—that the investigator's report "would be better evidence than anything else as to what he reported" (R. 451)—is in no sense a waiver of the hearsay objection which had been again voiced by Stewart in the next prior sentence. However, if there could have then existed any doubt as to Stewart's position, it was conclusively removed by his objection immediately following the sentence on which the Government relies (R. 451):

Your Honor, there is one more objection the tendency of the report, the report should be one he made, and he knows, for instance, he can't use a report that includes a lot of things he has no knowledge of.

It is thus apparent that the second statement on which the Government relies was merely an invocation by Stewart of the best evidence rule as to what the agent said in his report and of nothing more; and Stewart at the same time clearly reemphasized his objection to hearsay evidence whether oral or contained in a report which under the cir-

cumstances of this case was particularly prejudicial to Glasser. And, since the hearsay objection to such reports not only was obvious but had been specifically brought to the court's attention, it cannot reasonably be argued that Stewart was required to do more than to object as he did when these two reports were offered in evidence (R. 529, 532). The court had earlier ruled that all adverse rulings would be understood as carrying an exception (R. 185, 195). Nor can the subsequent admission of other similar reports, as the Government suggests (Gov't Br. 66), ameliorate the error in admission of these. Stewart deemed his objection and the court's ruling to be conclusive on all other similar reports (R. 185), i. e., if the objection did not lie here, it would not lie as to the other reports; on the other hand, if the admission of the reports was error, as he contended, it was error so plainly prejudicial as to require no reinforcement by continued objections to the other reports.

The Government's second contention, that these reports "were competent evidence" because they showed "what evidence of violations was furnished" and were therefore "directly relevant to the charge" (Gov't Br. 66) is in conflict with the basic principles underlying the hearsay rule as stated by this Court in *Mima Queen v. Hepburn*, 7 Cranch 290, 295:

Hearsay evidence is incompetent to establish any specific fact which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge. * * * Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is inadmissible.

It is plain that these reports could not have properly served, as the Government suggests, to make the jury "better able

to appraise Glasser's explanation of his conduct of the cases" (Gov't Br. 67) for they afforded but little indication of the evidence he had available. The premise for the Government's suggested assumption that consideration of these reports was, by instruction to the jury, limited to the question of notice is without merit because the fact that Glasser had received notice of the fact of these law violations was made to appear elsewhere (R. 528-529). Moreover, all of these reports, because they included statements of persons not before the court and so deprived petitioner of his right of confrontation and cross-examination, were hearsay, exceedingly prejudicial in character. Finally, because the jury could not know the rules as to the admissibility of evidence or know the distinctions between hearsay reports of agents and actually available testimony of witnesses or indeed know what were properly the duties of a prosecuting attorney under the circumstances, Glasser was particularly subject to prejudice by even the slightest error of the court which resulted in conveying a false impression to the jury.²⁴

²⁴ A further example of the callous indifference of the trial judge in permitting the introduction of inadmissible evidence is his action in permitting, over strenuous objection by all defendants (R. 450-451, 716), testimony as to statements made by Roth on two different occasions to Alexander Campbell, an assistant United States attorney at South Bend, Indiana (R. 680-689). Campbell testified that Roth in September 1938 came to see him about two defendants and attempted to bribe him so as to avoid their indictment if they had not already been indicted, saying, "Well, that is the way we handle cases in Chicago sometimes." (R. 680-682). Campbell also testified that in July, 1939, Roth told him of a pending investigation in Chicago by Special Alcohol Tax Investigator Bailey and asked if Campbell couldn't talk to him and "pull him off this investigation" (R. 683-685).

These statements, even if admissible against Roth (as they were not in this case), were certainly not admissible against Glasser. The first statement was not admissible because it was not in furtherance of the conspiracy here charged. *Prettyman v. United States*, 180 Fed. 30, 44 (C. C. A. 6); *Minner v. United States*, 57 F. (2d) 506, 510 (C. C. A. 10); *United States v. McNamara*, 91 F. (2d) 986, 988-989 (C. C. A. 2); *United States v. Sprengel*, 103 F. (2d) 876, 881 (C. C. A. 3). Testimony

2. *Hostile cross-examination and prejudicial remarks of the trial judge deprived petitioner of an impartial trial.*—In effect, the Government seeks to justify the highly prejudicial remarks of the judge, made as they were under circumstances and in a manner plainly tending to the prejudice of petitioner, as mere “clarification” (Gov’t Br. 72 note). In evaluating the prejudicial effect of these questions and remarks, regard must be had to the highly technical nature of the case and the fact that the lay jury had no knowledge concerning duties of an United States Attorney. The jurors must necessarily have been affected by any slightest intimation of the judge to a degree beyond that in an ordinary case where they could also be guided by their own personal knowledge.

(a) *Reiteration of ratio of no-bills to total of cases presented to grand juries (Petitioner’s Br. 42-43; Gov’t Br. 72, note 3).*—The Government’s explanation that the judge merely sought to “clarify” the testimony of the witness Morgan disappears upon reference to the record, where the utter lack of necessity of this undue emphasis by reiteration is shown (R. 196):

A. From an examination of the Sidney Eckstone Grand Jury records I can tell there were twelve no-bills returned in cases in which Glasser represented the Government. Glasser presented twenty cases to the Eckstone Grand Jury.

The Court: That is the total number of cases presented?

A. By Mr. Glasser.

The Court: To this Grand Jury.

A. Yes, sir.

of the second was inadmissible also because it was made after Glasser left office (R. 912), and hence occurred after the termination of the alleged conspiracy. *Logan v. United States*, 144 U. S. 263, 309; *Brown v. United States*, 150 U. S. 93, 98; *Collenger v. United States*, 50 F. (2d) 345, 348 (C. C. A. 7). And the sole purpose and result of this testimony was to prejudice the defendants in the eyes of the jury.

The Court: And of the twenty there were twelve No Bills?

A. Yes, sir.

Nothing could be clearer than the original statement of the witness. It was manifestly unfair for the judge to take a perfectly clear sentence, break it into segments, and secure a re-emphasized statement as if it were a matter of such vast importance that the jury should not overlook it.

(b) *Judge's statement as to availability of Ritter as a witness (Pet. Br. 43-44; Gov't Br. 75, note ¶ 7(b)).*—It was Glasser's uncontradicted testimony that a case had been stricken from the docket at the request of Government Agent Ritter, who was available to the Government if it wished to call him to rebut Glasser's testimony. The Government did not do so, and hence there arose a legal and logical inference that his testimony, if given, would not aid the Government (see citations in Pet. Br. 43-44). But the judge, in open court and during the progress of the trial, told the jury that just the contrary was true (R. 920). Thus the comment of the judge was not only untimely and uncalled for but was contrary to law and, in the minds of the jury, deprived Glasser of the benefit of his own testimony. The Government merely denies the law and the fact (Gov't. Br. 75 note).

(c) *Testimonial statements as to Abosketes (Pet. Br. 44-46; Gov't Br. 74, n. 6).*—The evidence of the Government as to Nick Abosketes was offered plainly in the hope that the jury might be caused to make the erroneous inference that Glasser was in some way connected with payment of money by Abosketes to one Brantman (see Pet. Br. 44-45). The record clearly shows that, usurping the functions of the prosecutor, the judge called for and testified to two indictments of Abosketes; he then testified as a witness as to what these indictments showed; and his final testimonial

statement was plainly intended to impress the jury (R. 1030):

I happen to know something about Nick Abosketes. In view of the fact that the judge was manifestly not subject to cross-examination, the inquiry of Glasser's counsel Stewart as to the disposition of the Wisconsin indictments and his meaningful statement that "we will accept your Honor's credibility" were the most he felt he could do in an attempt to protect his client's rights and tactfully call attention to the fact that the judge was testifying as a witness (R. 1030)—and the Government's present claim that this was "acquiescence" (Gov't Br. 74 note) is plainly specious. So also is the suggestion of the Government that this testimony of the judge merely "affected the credibility of Abosketes" (Gov't Br. 74 note). Judge Stone was in error when he stated in his testimonial question (R. 941) that at the time Glasser was seeking to get evidence against Abosketes (February, 1938; R. 647) there were pending indictments against Abosketes in the Eastern and Western Districts of Wisconsin (see Pet. Br. 44-45). Contained as it was in a question whether Glasser knew of these indictments (R. 941), this question was highly prejudicial since it gave the jury to understand that Glasser should have had knowledge of a non-existent fact. And as to both indictments, it led the jury to believe that this failure of investigation was chargeable to Glasser rather than to the Alcohol Tax Unit whose duty it was to investigate this and similar cases and report to Glasser (R. 898).

(d) *Rhetorical questions as to Glasser's judgment* (Pet. Br. 46-47; Gov't Br. 76 note).—Despite the Government's assertion to the contrary (Gov't Br. 76 note), the objectionable nature of the court's questions in their argumentative and critical aspects is apparent. While Glasser had testified only to his judgment in one case that certain sentences

should be reduced, the court's questions naturally misled the jury to assume that he was proposing, as the judge said, to turn them all "loose" immediately (R. 1022). Aside from the fact that it was plain error for the judge to thus express to the jury his view that Glasser's judgment and conduct was improper, the correctness of his implied conclusion is very doubtful. For it later eventuated that the indictment in the Eastern District of Wisconsin—to which the court referred and which was the only one in existence in February, 1938, the time of Glasser's criticized conduct (R. 941, 943)—had there been pending without action for more than two years since January 1936 (R. 1030) and hence, even if material to Glasser in his district, was apparently a case so poor that the Government did not press it.

To minimize this situation the Government insists that Glasser was not prejudiced because he explained his conduct by saying, "it was the judgment of myself, Judge Igoe and Mr. Herrick" (R. 1022)—but the Government overlooks entirely the fact that this explanation by Glasser was curtly stricken (R. 1023), thus emphasizing the prejudice.

(e) *Attempt to nullify testimony of Glasser's witness, Judge Igoe (Pet. Br. 47-49; Gov't Br. 73, note ¶ 5).*—The Government suggests that the judge by his interruptions and interference was "merely trying to refresh Judge Igoe's recollection and to reconcile his testimony with the earlier testimony of Bailey, as a course more tactful than subsequent rebuttal would have been" (Gov't Br. 7 n. ¶5). But the Government's attempted explanation is plainly without merit, for the trial judge could not properly interfere to "reconcile" Judge Igoe's testimony in order to sustain Agent Bailey's testimony. Moreover, the Government's explanation rests upon a carefully fostered assumption of a non-existent conflict of testimony.

After setting out the theory of the Glasser defense found in earlier testimony of Judge Igoe, the Government says (Gov't Br. 73 n. ¶5):

Bailey, *however*, had previously testified that he had a conference with Judge Igoe and Glasser in January 1938 regarding the case the Alcohol Tax Unit was developing against the Hodorowicz gang and that he discussed the case with Glasser a number of times thereafter, and that his final report was not submitted to Glasser until April 1938 (R. 706-708). (Emphasis supplied)

But this statement is wholly unfounded because: careful examination of the Government's narration of the prior testimonial statements of Bailey and of Igoe (Gov't Br. 73-74) will show that, until the intrusion of the presiding judge, there had developed no conflict between them. Judge Igoe had testified that the Bailey report, Exhibit No. 160, dated April 21, 1938, had been brought to his office one day by Bailey and Glasser; that he had then stated to Glasser that this voluminous report indicated the agents were going after minor violators rather than the "real offenders"; that if, after Glasser examined it, it showed a real case against the Hodorowicz brothers, they would be prosecuted; that Glasser examined and recommended prosecution of the Hodorowicz brothers on substantive counts rather than a conspiracy ~~count~~ carrying only a two year sentence; and that he, Igoe, approved (R. 891-892). Bailey, as the Government says (Gov't Br. 73), had merely testified that he had had a conference with Glasser and Igoe in the early part of 1938 and that after numerous subsequent conferences he had made his report dated April 21, 1938 and brought it to Glasser on that day (R. 706-708). Thus, contrary to the impression the Government seeks to convey, at the time of the interruption there was no testimony of Bailey to negative Igoe's testimony to the fact that he had seen the report

and to the fact that it was brought to him by Glasser and Bailey.

Despite Igoe's positive testimony that he had seen the report, the court averred that he "wondered," "was just wondering," and again "wondered" whether Igoe had seen it (R. 892). Then, in the passage of which petitioner complains, without leaving it to the prosecutor to produce witnesses in rebuttal after Igoe should have completed his testimony and although the question of dates was not presently pending—the court stopped the cross-examination, assumed the role of an advocate and, as the presiding judge, (1) emphasized Bailey's prior testimony as though it negatived Igoe's testimony as to their conference concerning the report, (2) obtained Bailey's statement that he did not have the report with him at the conference with Judge Igoe and Glasser; and then (3), because of this mere denial by Bailey, that he had personally brought the report to Glasser and Igoe, the judge drew, and stated to the jury, the utterly unfounded further inference that Igoe had never seen the report. In effect he thus destroyed the benefit of all of Igoe's prior testimony that he had seen the Bailey report and had approved Glasser's action thereon—all this without the slightest foundation.

Even were there danger of "untactful" rebuttal of Igoe imminent, as the Government now conjures though there is no showing that it was, the decision as to whether he should be allowed to persist in his story and run the risk of such rebuttal was not for the presiding judge to decide. The judge was not the prosecutor trying the case; or at least he should not have been. The action of the judge not only destroyed the benefit of the prior testimony of Judge Igoe but necessarily impaired in the minds of the jury the credibility of all his subsequent testimony. Judge Igoe was obviously one of Glasser's most important witnesses. To condone this action of the judge would be to impair sub-

stantially the right to a fair trial. The serious prejudice to petitioner is obvious.

(f) *Wilful misrepresentation as to duty of petitioner* (Pct. Br. 49-52; Gov't Br. 70-71, note 3, ¶ 1 and 2).—The Government's suggestion that the phrase "dropped out of mid-air" used by the judge with reference to one of Glasser's cases (R. 232) is mere idiom ignores the connotation of the idiom—that there was some unexplained quality about the occurrence. It was intended to suggest to the jury that there was some mysterious and ulterior cause for the fact that the defendants had not paid a fine. Yet only a few seconds earlier Ward, the prosecuting attorney, had clearly stated that the questioning was as to a mere arraignment for taking pleas (R. 231-232). The further suggestion by the Government that it was mere interrogation "as to the disposition of the case" (Gov't Br. 70 note) will not stand in view of the fact that the witness had just testified that "I never heard any more about the case". Certainly, there was nothing left to clarify and the judge may not, in the guise of clarification, by adroit verbiage thus create in the minds of the jury unjustified inferences of guilt.

To explain the same sort of judicial cross-examination of Anthony Hodorowicz respecting Glasser's handling of an arraignment, the Government says it was "based upon a mistaken assumption of the nature of the appearance" (Gov't Br. 71, note).²⁵ After the witness had testified that the facts were not brought out before Judge Woodward and that the defendants were called before the judge "just to mention our names" (R. 347-348), to assert that any fed-

²⁵ Conceding error, the Government contends this was not prejudicial, apparently because "the main fact in the Stony Island Avenue case was that it was stricken from the docket" (Gov't Br. 71-72). Plainly fallacious is the basic assumption that the jury could appreciate any such "main" object of the Government and disassociate the inevitable inference here created.

eral judge would not at once know that such occurrence could not have been a trial is to strain credulity. Moreover, the court did not stop with a single such rhetorical question, but embarked on a whole course of questions to reemphasize the point and ended with the following conclusion (R. 348):

So you don't know,—your recollection is that there was not a complete disclosure of all the facts that connected you with that case, before the Judge.

The use of the phrase "not a complete disclosure" shows that this was an argumentative summarization rather than any attempt to obtain clarifying statements from the witness. No jury, from this line of questioning, could gather other than that Glasser had been guilty of breach of his duty in handling this matter—which was a mere arraignment and obviously handled quite properly by Glasser. The question of what was proper conduct by Glasser on such occasions was obviously a technical one with regard to which the slightest indication of the attitude of the supposedly informed judge must necessarily have had peculiarly weighty effect with the jury.

It is important to note, therefore, that this questioning as to the arraignment is not the sole instance where the same sort of innuendo as to misfeasance by Glasser on such occasions resulted from questioning by the judge which ignored the obvious situation. Another example is afforded by the cross-examination of Roth by McGreal (R. 873). There it had just been stated, not by the witness but by the prosecutor, that the libel case against the Chrysler car of Rose Vitale had been tried on statement. This had been affirmed by the witness who stated, "Mr. Glasser made the opening statement, read the report and submitted it to Judge Barnes." Judge Barnes had earlier explained in detail that this case was tried on the statement and that under these circumstances cases are heard without actual

testimony. He had also testified to the fact of frequent use of such procedure (R. 717-718). Despite this clear description of the situation and the earlier explanation, as to which there could be no possible misapprehension by any lawyer, the judge asked (R. 873):

Was any witness sworn or testimony taken?

But since the case was tried on the statement, there was no occasion for witnesses or testimony.

From the judge's inquiries in each of these two instances, the only result possible was to create in the minds of the jurors the definite but unfounded impression that the absence of questions in the first, and the absence of witnesses in the second were indicative of wrongful conduct on the part of Glasser.

(g) *Hostile questioning of petitioner in connection with the Vitale libel case (Pet. Br. 52; Gov't Br. 76-77 note).*—The Government purports to explain the hostile cross-examination of Glasser as to his presentation of the Chrysler sedan libel case (R. 1000-1001) on the ground that "in his examination the court simply sought to ascertain Glasser's reasons for not bringing to Judge Barnes' attention the information he had of Leo Vitale's bootlegging activities" (Gov't Br. 77 note). But Judge Barnes already knew these facts when the case was tried before him (R. 717) and it was not Leo Vitale himself but Rose Vitale who was before Judge Barnes on that occasion.

(h) *Hypothetical question without foundation in the record. (Pet. Br. 53-54; Gov't Br. 77-78 note).*—In evaluating the Government's defense of the judge's damaging hypothetical question in the Chrysler sedan libel case, regard must be had to its wording (R. 1001-1002), which was:

Isn't it a fact, Mr. Glasser, if an automobile is found on the premises where there is also found an unregis-

tered still, that if it is found within the enclosure, and you have got evidence which can establish that the particular automobile found within the enclosure of the unregistered still, was on numerous occasions followed by the Alcohol Tax Unit, and observed and seen cans of alcohol being placed in it, and license number changed on it, and traced to the premises where the still is actually found, do you consider that fairly good evidence that the automobile was being used to defraud the United States Government out of the taxes on alcohol?

The unfounded assumptions of the question, which required Glasser to answer in the affirmative and which were assumptions of fact not in evidence, were that cans of alcohol had been seen being placed in the car and license numbers changed on it. The Government's partial reliance on Exhibit 36 as supplying these facts is absurd since it was read to Judge Barnes who testified that on this report the car was not in the place where the still was, i. e. the enclosure, and that the libel was required to be dismissed for that very reason among others (R. 717-718).

The Government also relies on a paper not in evidence, to supply these facts. It refers to a criminal case report allegedly made by Dowd, quoting directly and indirectly from it in an effort to sustain the facts assumed by the judge. It concludes with the statement that this report was part of a file "introduced as exhibit 210 and it is on file here" (Gov't Br. 77-78 note). Thus, the Government takes direct issue with petitioner's assertion that this criminal file was not in evidence (Pet. Br. 54) but notably fails to show by citation to the bill of exceptions where "Exhibit 210" was introduced. A most careful scrutiny of the bill of exceptions discloses that it was in fact never offered in evidence. Clearly, it will not do to rely on the fact that the clerks of the courts below forwarded these papers so that they are on file here; and of no more avail is the certificate of the clerk of the district court (R. 1075, 1088). The fact

that the clerk erroneously certified Exhibit 210 is traceable to the circumstance that the Government retained all exhibits and then sent them to the clerk with a receipt including a list which he apparently accepted without checking against the bill of exceptions (see Pet. Br. 55-57). For, in the interest of accuracy, the law is well-established and the strict rule is that this Court will ignore papers not made a part of the bill of exceptions duly certified by the judge, *Bank v. Kennedy*, 17 Wall. 19, 29; *Reed v. Gardner*, 17 Wall. 409, 411; see *Hanna v. Maas*, 122 U. S. 24, 26, either by incorporation in the body of the bill or by reference. *Jones v. Buckell*, 104 U. S. 554, 556. When incorporated by reference, the paper must be marked by means of identification mentioned in the bill of exceptions. *Leftwitch v. Lecanu*, 4 Wall. 187, 189; *Krauss Bros. Co. v. Mellon*, 276 U. S. 386, 393-394. And certification or forwarding of papers by the clerk can add nothing to the bill of exceptions. *Lessor of Fisher v. Cockrell*, 5 Pet. 248, 254; *Buessel v. United States*, 258 Fed. 811, 816-817; *King v. United States*, 1 F. (2d) 931; *Lau Lee v. United States*, 67 F. (2d) 156, 158; see *Hanna v. Maas*, 122 U. S. 24, 26.²⁶ It thus conclusively appears that, while this criminal file was ostentatiously handed to Glasser with the obvious effect of conveying to the jury the impression that it contained a report sustaining the hypothetical question, and although handing it to the judge necessarily made the same impression on the jury (R. 1002), the prosecution never even attempted to offer it in evidence and thus avoided scrutiny or question of its competence and admissibility by petitioner. Compounding the prejudice and wrong to petitioner, the Government in this Court, after its

²⁶ The judge's certificate to the bill of exceptions states that it includes "all evidence adduced at said trial" (R. 1069), and it was ordered that all the original physical exhibits introduced be by reference incorporated in and made a part of the bill of exceptions (R. 1092). There is no question, therefore, but that this Court may consider the sufficiency of the evidence.

attention has been called to this fact (Pet. Br. 54), nevertheless persists in its utterly unsupported statement that this file as part of "Exhibit 210" was introduced in evidence. But, even "Exhibit 210" does not supply these facts, as a perusal of the Government's own statement (Gov't Br. 77-78 note) discloses and as examination of the so-called exhibit will also disclose.

Conclusion.—The efforts of the United States to minimize the misconduct of the trial judge are obviously not well taken. They ignore the record; they strain the evidence; and they are based upon unfounded assumptions. Moreover, it is well-recognized that, where a case against a defendant is weak, even slight judicial error necessarily results in prejudice and requires reversal. "In these circumstances, prejudice to the case of the accused is so highly probable that we are not justified in assuming its non-existence." *Berger v. United States*, 295 U. S. 78, 89-90. "The greater the doubt of guilt, the more likely that prejudice results from errors in the trial." *Gold v. United States*, 26 F. (2d) 185, 186 (C. C. A. 2). Even where "there is a substantial conflict in the evidence" the rule is applied, *Adler v. United States*, 182 Fed. 464, 473 (C. C. A. 5); *Williams v. United States*, 93 F. (2d) 685, 692 (C. C. A. 9); and here even the Government concedes that the evidence "was sharply conflicting" (Gov't Br. 32). The conduct of the presiding trial judge in this case plainly requires reversal of the judgment against Glasser.

VIII.

The improper conduct of the prosecuting attorney violated the right of petitioner to a fair and impartial trial

(Pet. Br. 54-72; Gov't Br. 81-97).

1. *During the trial the prosecuting attorney wrongfully deprived petitioner of his right to examine exhibits intro-*

duced or marked for identification (Pet. Br. 55; Gov't Br. 89-90).—In the course of cross-examination of the petitioner, he was questioned as to some 20 of the thousands of cases handled by him during his tenure. The prosecuting attorney, in conducting the cross-examination, relied upon and referred to the files in these several cases without permitting petitioner to examine them. These files had either been admitted in evidence or marked for identification and, therefore, should have been in the custody of the clerk so as to provide opportunity for examination by either side. The failure of the prosecuting attorney to so deposit them was a clear violation of Rule 16 of the District Court. See Pet. Br. 55.

Because Glasser was forced repeatedly to answer the prosecuting attorney's questions with a statement that he did not know, the latter in open court offered to "hand him any file here that he wants to look at, so he can look at it and be prepared for the examination" (R. 979). Thereupon the court ordered: "We will suspend now, until Monday morning at ten o'clock. In the meantime you may have access to those files" (R. 980).

Accordingly, on Saturday morning Glasser went to the office of the United States attorney where the files were, and McGreal, the assistant prosecutor, refused him access to the files. When, after the week-end, the prosecutor Ward renewed his practice of questioning Glasser and commenting on Glasser's statements that he did not recall the cases, Glasser called attention to the fact that he had been denied access to the files (R. 982). The prosecutor McGreal stated to the court that he had informed Glasser through a clerk that he would not see him alone and suggested that he get his lawyer (R. 982)—although Glasser only had Saturday or Sunday, his lawyer presumably could not be summoned on any moment's notice, and the United States Attorney's of-

ficce is closed Saturday afternoons and Sundays.²⁷ There-upon the court stated (R. 983):

They simply told you to get your lawyer, and you didn't get your lawyer so the responsibility is not upon them. Show him the reports now.

Thus, the prosecutors, by breaching the fixed rule of the court requiring custody of exhibits by the clerk, were enabled to comment in the presence of the jury that Glasser kept answering he did not recall specific cases. They were also enabled to exhibit an appearance of generosity before the jury by stating they would show the files to Glasser over the weekend. And on the following Monday they were again enabled by their obviously specious excuse to obtain the judge's criticism of Glasser, making him appear negligent for failure to produce his lawyer.

The Government, apparently adopts this excuse of the prosecutors as sufficient and here argues: (1) that the prosecutors were merely "impolite and unfriendly" and their acts "not * * * prejudicial"; and (2) that Glasser was not placed at a disadvantage, because files or reports "were handed to him from time to time as the prosecutor questioned him regarding various cases" (see, e. g., R. 983, 996-999, 1006, 1008). But Glasser had an unconditional right to examine all exhibits whether introduced in evidence or marked for identification; denial resulted in his giving the appearance of a reticent witness before the jury; and the result was not only wrongful but prejudicial in a degree not easily minimized. The prosecutor's excuse for failure to comply with the court's order for access—that he "wouldn't see him [Glasser] alone under any circum-

²⁷ In view of the fact that this demand was made at 10:30 A. M. on Saturday, a half day (R. 982-983), it was obvious that the delay incident to obtaining the presence of Stewart would have so materially shortened the time remaining for examination of the files as to make the right of access valueless.

stances" (R. 983)—was obviously irrelevant and entitled to no consideration. For Glasser was not there to see McGreal; he was there to examine the files and McGreal's presence was in no way essential; and, indeed, Glasser did not ask to see McGreal but Ward (R. 982). Neither was the presence of Glasser's lawyer essential. Had McGreal deemed supervision of Glasser's examination desirable that could have been provided by a clerk without the presence of McGreal; and it was Glasser's recollection that was to be refreshed, not his lawyer's.

The suggestion that Glasser suffered no disadvantage because the files were handed him as he was questioned is, of course, frivolous.²⁸ The prejudice to Glasser is apparent in the cross-examination relating to the Workman case. Prior to the week-end recess, Glasser had indicated his inability to answer the questions of the prosecutor without having had opportunity to examine the files in the case (R. 975, 977, 979). Immediately after the recess, he was again compelled, by reason of the arbitrary action of the prosecutor, to state that he did not know how large the distillery was (R. 981, 982) although the files of the prosecutor included many papers relating to this still some of which would have disclosed its size and had already been marked for identification (Exhibits No. 1, R. 193; No. 4, R. 194; No. 5, R. 194; No. 7, R. 197; Nos. 8-18, R. 198; Nos. 20-34, R.

²⁸ Of the three examples cited by the Government to show that this practice resulted in no prejudice, "(R. 983, 996-999, 1006, 1008)," the first is a mere docket sheet. The second citation is to the agent's reports concerning activities of one Leo Vitale. While Glasser was able from cursory examination to state what appeared on the first page of each file (R. 997, 998), when he was asked whether a certain individual, Barney Cloonan, was the agent (R. 999) his interrogatory answer indicates that he was unable to determine who had written the report from the opportunity for cursory examination thus afforded. The remaining examples cited by the Government, (R. 1006, 1008), merely show instances of Glasser's ability to make answers from a glance at the papers involved.

211).²⁹ It may be noted, also, that the size of the still was not inherently important; and the questions were seemingly directed to obtaining statements from Glasser that he didn't recall the facts, thus raising in the jury's mind at least a doubt of Glasser's credibility.

With regard to the Zarrattini case, Glasser before the recess, had shown that he had not the slightest recollection of it (R. 957). After the recess, Glasser having still been denied access to the files, he was again forced to say that: "I don't remember the Albina Zarrattini case. * * * I don't know. I have no recollection" (R. 987). The same course of conduct was adopted by the prosecutor in his questioning as to the Kwiatowski case; initially, Glasser stated he did not remember the Kwiatowski case (R. 961-962); after the recess, the prosecutor's questions again forced Glasser to answer (R. 986): "I don't remember the Kwiatowski case."

Even more plain was the prejudice to Glasser in refusing to permit him access to the file on the Spring Grove case. As to this, he had to answer: "I don't remember the Spring Grove case" (R. 970) and make repeated statements to the effect that he did not know or did not remember. Indeed,

²⁹ Although these papers are certified here by the clerk as exhibits (R. 1075-1077), they are nowhere shown in the bill of exceptions to have been introduced in evidence. Indeed, a rigid scrutiny of the record in this case has disclosed that, of the 217 exhibits certified by the clerk, only 107 are shown by the bill of exceptions to have been introduced in evidence. It also discloses that some 23 exhibits introduced in evidence were omitted from the clerk's certificate.

The Government suggests that it does not appear that the files to which access was denied were ever introduced in evidence (Gov't Br. 90, n. 11). But even if this be conceded, the prosecutor's action in withholding the files from the custody of the clerk is still not justified for Rule 16 of the district court provides that papers when "marked for identification" shall be placed in the clerk's custody. And of course, the fact that they had not been introduced in evidence would in no way excuse the prosecutor's failure to comply with the order of the judge, particularly where it furnished a basis for further prejudicing petitioner in the eyes of the jury.

he pointed out that the prosecutor had the report before him while Glasser had to testify from memory (R. 971). This report had previously been admitted in evidence as Exhibit 113 (R. 532). The prosecutor stated this exhibit was 75 to 80 pages long (R. 540). Yet Glasser was never given adequate opportunity to examine it. Also, in the cross-examination of Glasser concerning the Western Avenue still case (R. 967, 969), Glasser plainly had great difficulty in testifying because he had not been given access to the report of the agent in that case (Exhibit 81A, introduced R. 529).

The damage to Glasser was immeasurably increased of course when, after the ostensible generosity of Ward in offering access to the files (R. 979) to which Glasser was entitled as a matter of right, the Judge in the presence of the jury charged *Glasser* with responsibility for the arbitrary denial of access to the files, on the ground that he did not have his attorney with him (R. 983).

In spite of this conduct of the prosecutor, the Government, in discussing the sufficiency of the evidence, now has the effrontery to assert in this court that Glasser's "credibility was seriously impaired by his uncertain testimony on cross-examination and by his self-contradictions" (Gov't Br. 31, note 20).

2. *After the verdict, the prosecutor removed from the office of the Clerk and lost exhibits deposited with the Clerk forming part of the record in this case (Pet. Br. 55-56; Gov't Br. 94-95).*—Petitioner's main brief points out that the record shows, and the Government does not now deny, that the prosecutor without the consent of petitioner, took the exhibits in the case from the custody of the clerk at the close of the trial and, without the knowledge of petitioner, retained them for almost five months until they were de-

manded by the clerk of the circuit court of appeals.³⁰ During this period some of the exhibits were lost, or at least they were never returned by the United States Attorney's office. The Government now seeks to excuse the failure of the United States attorney to return certain of defendant's exhibits in the case, particularly Exhibits Nos. 205 and 206 (introduced, R. 953) by relying on the prosecutor's bald assertion that he did not receive them, and on the further answer, also advanced below, that the original stenographer's transcript did not show that these were offered and received in evidence. It would be preposterous to hold for a moment that the prosecutor, having taken the exhibits and having wrongfully withheld them for a period of five months, may now return such as he deems best or is able to return and blandly state that he never obtained the others. The Government's only other answer is that the original stenographic transcript does not show that the missing exhibits were introduced in evidence (Gov't Br. 95); but what the original stenographic transcript of the testimony showed was, of course, unimportant because the prosecutor approved the bill of exceptions which, being signed by the judge (R. 1069) imports absolute verity, and shows introduction of Exhibits 205 and 206 (R. 953, 1068). There has been a plain violation of Glasser's right to have preserved all the evidence taken at the trial.

³⁰ The Government now seeks to excuse this conduct by reference to the fact that another defendant, Roth, consented to the Government's taking "the Exhibits for the purpose of making a list of the same" (R. 1094), and by assertion that "there was no objection either at the time or thereafter to the prosecutor's retaining the exhibits" (Gov't Br. 94). But these arguments have no merit. The consent of Roth could not bind Glasser. Furthermore, even this consent was limited to the short period necessary for "making a list" of the exhibits (R. 1094, 1096, Gov't Br. 94). Implied consent by Glasser may not be based on his failure to make objection for he did not even know that the exhibits, in breach of the rule of the court (Rule 16), had been retained in the custody of the United States attorney. Furthermore, the prosecutor may not excuse his breach of the rule on the ground that no one objected.

3. *After trial, prosecutor McGreal unlawfully mutilated exhibits constituting a part of the record in this case (Pet. Br. 57-60; Gov't Br. 95-97).*—The Government admits that the prosecutor improperly made additions to an exhibit after the trial.

The Government's defense of this conduct is the assertion that, in thus calling attention to a plain violation of duty by a judicial officer, the *petitioner* is guilty of "a reflection upon the intelligence and judicial integrity of the court below" (R. 96). With equal validity, the Government might here accuse petitioner of reflecting upon the judicial integrity of this Court in calling attention to the fact that "Exhibit No. 210" is neither included in or mentioned in the bill of exceptions although heavily relied upon by the Government, and by it asserted to have been introduced in evidence (Gov't Br. 78 note), *supra*, p. 65.

The attempt of the Government to show that some of the facts shown by McGreal's post-trial additions were brought out in the trial because as McGreal well knew in emphasizing it, the important point was, not whether Kaplan had been indicted, but that he "Pleads Guilty" (Exhibit No. 130), a fact nowhere in evidence because it did not occur until after the trial.

4. *Prosecutor Ward, by his leading questions, assumed the role of a witness (Pet. Br. 60-63; Gov't Br. 81-82, note 3).*—To illustrate the flagrant nature of the prosecutor's violation of the rule against leading questions on direct examination, petitioner has pointed out in the main brief (Pet. Br. 60-63) an instance where the testimonial form of the prosecutor's question served as the sole link to connect petitioner with the alleged payment of money to Kretske for the purpose of "fixing" the Stony Island Avenue still case. The Government contends, and defends on the ground, that the record shows that the "questions were propounded to refresh Swanson's recollection" (Gov't Br.

82 n. 3). This apparently refers to the context of the question (R. 230):

Mr. Ward: Q. Would it refresh your recollection if I was to tell you that Kretske said "Don't worry about a thing. Everything will be taken care of."

A. Yes, that was said.

Q. And Dan was to get part of the money that was given him?

A. Well, I don't know if he said Dan or Red, or something like that, either one.

There is thus not the slightest hint of a reference to earlier memorandum or testimony by which to refresh. Plainly the mere use of the phrase "refresh your recollection" cannot justify a procedure by which the unsworn prosecutor testifies by using as a sounding board a confessed law violator (R. 225, 232). The result would be to set at naught the elementary principles of judicial evidence. Admittedly, the court has a wide discretion in permitting leading questions, but here the repeated indulgence of the prosecutor in putting leading questions to his own witnesses—questions which made clear the answer desired—was manifestly unfair to petitioner. And this was particularly true here where the questions were being put to his own witnesses who were not only friendly but were under the severest sort of pressure to answer favorably.⁴¹ Such conduct by a prosecutor so violates his duty to see that persons are not deprived of their liberty in an unfair manner that reversal is required.⁴² *Nurnberger v. United States*, 156 Fed. 721, 734-735.

⁴¹ Practically every one of the witnesses for the Government was either under sentence, or indictment for violations of the alcohol tax laws and therefore peculiarly subject to the slightest suggestion from the prosecutors. Swanson admitted that he expected to gain lenience for his confessed part in the Stony Island still case (R. 239) and that he would rather commit a little perjury than go to the penitentiary (R. 235).

⁴² Petitioner's argument as to the importance of this error does not, as the Government asserts (Br. 82 note 3), ignore the evidence that \$500 was paid to Kretske. The Government has yet to show that Glasser con-

For the Government to urge the omission of objection to Ward's leading question is to require the doing of a vain thing in the light of the court's reaction to the same objection made but a moment before (R. 229) and to the objection of attorney Balaban a minute earlier in the examination of the same witness (R. 227). It was apparent to all that the court was going to let Ward put whatever he desired into the mouth of his own witness. The uselessness of such objections, once the leading question is asked, is apparent from the passage at R. 245. The continuing practice of Ward in putting precise words in his witnesses' mouths appears at R. 301, 303, and R. 380.³³ The judge gave his full approval to the "refreshment of recollection" subterfuge (R. 703).

5. *The prosecuting attorney read to the jury only part of the testimony of a witness before the grand jury, deliberately leaving the jury to infer, contrary to fact, that this was the only testimony given by the witness (Pet. Br. 63-66; Gov't Br. 87-88).*—Petitioner's main brief has pointed out the oral testimony showing that Glasser in his presentation to the grand jury of the available evidence in the Spring Grove case did not repress Government witness Cole, whom he believed to be mentally unsound. And it was there pointed out that the prosecuting attorney read to the jury in this case a small and irrelevant portion of Cole's testi-

spired with Kretske or that there was a conspiracy for the purpose alleged in the indictment. As we have shown above, Glasser struck the case from the docket at the request of an Alcohol Tax Unit agent. Neither to be lightly overlooked is the fact that Swanson himself testified that, although he had confessed his guilt in the case at least four months before, Ward had not yet reinstated the case (R. 236, 238). And Ward, Glasser's successor, had at the time of Glasser's trial failed for 11 months to proceed to trial on the evidence which the Government's whole argument assumes was sufficient and available to Glasser.

³³ Although mentioned at R. 290 and forwarded by the clerk as Exhibit No. 68 (R. 1079), the commissioner's file, from which the prosecutor purported to state his question, was never offered or accepted in evidence.

mony, relating to Cole's illness, from a paper purporting to be "the transcript of testimony taken before the grand jury on May 17, 1938" and identified as Exhibit 96 (R. 186, 574-575). Oral testimony of the Government's own witnesses, including Cole, indicates that Cole was examined at least twice before the grand jury and that he did testify as to the facts in the Spring Grove case. See Pet. Br. 64. Dropping all argument based on oral testimony found in the record, the Government now relies on "Exhibits" 95 and 96 as showing that the Spring Grove case was presented at one session on May 17 and that "Exhibit 96," the paper from which Ward read (R. 574), shows on its face that it is "a complete transcript of *all* the testimony of *all* the witnesses called before the [grand] jury in the . . . Spring Grove case" (Gov't Br. 88-89). There are two flaws in this line of argument. First, the unauthenticated "Exhibit" 96 merely bears the heading:

Proceedings had and testimony offered before the Federal Grand Jury sitting in the Grand Jury Room, United States Court House, at Chicago, Illinois, 2:00 P. M., Tuesday, May 17, 1938.

Thus, while "Exhibit 96" admittedly contains the testimony of each of 10 witnesses, it fails to negative the testimony of the Government's own witnesses, that Cole testified at least twice and testified as to the facts of the Spring Grove case. Certainly this "Exhibit" falls far short of showing on its face, as the Government asserts, that it is "a complete transcript of all the testimony of all the witnesses called before the jury in the . . . Spring Grove case" (Gov't Br. 88-89). Secondly, "Exhibit 95," the minutes of the May, 1938, grand jury, in part relied on by the Government to support its interpretation of "Exhibit 96" (Gov't Br. 89 n. 9), is not part of the record in this case. Although several times referred to (R. 528, 591, 971) and

although certified as an exhibit by the clerk (R. 1080) the bill of exceptions fails to show that it was ever introduced in evidence.³⁴ Furthermore, even if this Court were to consider it, "Exhibit 95" fails to negative that all or some of the witnesses did, as shown by the Government's oral testimony, give additional statements to the grand jury on the same day or, indeed, on the same afternoon. Thus it cannot be denied that the prosecutor misled the jury by purporting to read all of the relevant portions of a document, "Exhibit 96", which was not complete although its completeness was the very point in issue.

6. *The prosecutor persisted in the putting of specious questions and damaging innuendoes.*—Petitioner rests upon his main brief in the matter of the questions, innuendoes, and fallacious statements made by the prosecutor. One item will suffice here. The prosecutor's statement as of personal knowledge that Glasser knew persons accused of various law violations was highly prejudicial and reversible error. See Pet. Br. 67-68; Gov't Br. 84. In cross-examining Judge Igoe, Prosecutor Ward asked whether he knew certain individuals and then flatly stated (R. 908):

That is the point. I say you don't know them, but Mr. Glasser does know them.

Counsel for the Government "concede that it was improper but in the light of the circumstances under which it was

³⁴ As a result of petitioner's scrutiny of the record, it must now be conceded by petitioner that "Exhibit 96" as well is not shown by the bill of exceptions to have been introduced in evidence, although identified and referred to (R. 529, 574-575). Petitioner must therefore concede that, contrary to the assumption contained in petitioner's main brief (p. 66), this purported transcript of the testimony before the grand jury cannot be conclusively presumed to have been submitted to the jury on Glasser's trial. However, the fact that it was read to the jury appears from the bill of exceptions (R. 574) and since it is properly identified, it may be considered by this Court in determining the question of the propriety of the prosecutor's conduct in reading it as though it were a complete transcript of the proceedings in the case.

uttered we do not think it was of such a serious nature as to constitute reversible error" (Gov't Br. 85). The circumstances are best understood by reference to the record showing of the character of these individuals whom Glasser was thus accused of knowing. They were the following, whom the prosecutor had just named (R. 907):

1. Elmer Swanson, who was a confessed participant in the operation of at least two different stills (R. 225, 227) and who had testified to paying money to Horton, and Kretske (R. 225-226, 229, 231).

2. Clem Dowiat, nephew of Frank Hodorowicz, arrested for alcohol tax law violation in June, 1937 and dismissed (R. 269-270), on September 1, 1937, in connection with the 118th Street still and discharged (R. 270-271) on December 31, 1937, and indicted and convicted in another case (R. 272, 275, 276).

3. Kamarek (Kazmicerczski?) was apparently claimed by the Government to be an associate of Clem Dowiat (R. 269).

4. H. L. Welch, alias John Pope, alias Yarrío, alias Sheenie Alberts had been arrested and indicted with William Workman in connection with the operation of a still (R. 194, 210-211) and his case was dismissed for want of prosecution on April 1, 1936 (R. 195), because the witnesses could not identify him (R. 979).

In view of the records of these men, the flat and emphatic statement of the prosecutor that, of his own knowledge, Glasser knew these men was thus unavoidably of a highly prejudicial nature. But the court forbore to rule on the motion of Glasser's counsel to strike the statement from the record. The Government attempts to confuse the issue here by alluding to the delicate situation which the prosecutor thus created by his offensive questioning of Judge Igoe, and by citing the diplomacy of the trial judge who, as a matter of fact, first attempted to defend Ward's questioning (R. 908). The record is clear that Glasser was deprived of the

basic right of confrontation of witnesses in permitting the unsworn prosecutor to brashly testify as of his own knowledge. None of the circumstances suggested by the Government ameliorate in any way the serious character of the consequent prejudice to Glasser. The rule is uniform that a defendant may not be subjected to a trial on the unsworn statements of an attorney conducting the prosecution, even when such statements are relevant to the case for he would by this procedure be deprived of the right of cross-examination and be also deprived of the right of giving evidence in rebuttal. *Berger v. United States*, 295 U. S. 78, 87-89; *Lowdon v. United States*, 149 Fed. 673, 677; *Taliaferro v. United States*, 47 F. 2d 699, 702.

7. *The prosecutor surreptitiously caused to be submitted to the jury prejudicial pre-trial statements corroborative of the testimony of Government witnesses (Pet. Br. 69-72; Gov't Br. 91-93).*—Petitioner in his main brief pointed out that a pre-trial corroborative statement by Government witness Raubunas dated October 20, 1939 (R. 482, 518), was offered in evidence as Exhibit 92 and objection thereto sustained (R. 712). This the Government now concedes (Gov't Br. 91-92). But the bill of exceptions conclusively shows that this exhibit was nevertheless surreptitiously included by the prosecutor in a group of 33 exhibits submitted by the Government at the close of defendant's case and made a part of the record (R. 1034). This pre-trial statement thus sent to the jury was highly prejudicial to petitioner because it is corroborative of the oral testimony of the witness, which included statements that the witness had seen Glasser with Kretske and Kaplan (R. 457-462).

Exhibit 92 was not included by the prosecutor in the exhibits which he returned to the clerk after retaining them for five months subsequent to the trial, and the clerk did not include it in his certificate (R. 1075). However, petitioner persisted in his assertion that this was an exhibit

introduced in evidence (R. 1098) and the prosecutor finally delivered Exhibit 92 to the clerk of the circuit court of appeals (R. 1100). The circuit court of appeals held that despite this clear showing of the bill of exceptions, it could not say that this exhibit was sent to the jury (R. 1132). And the Government continues to rely on the absence of Exhibit 92 from the list of exhibits certified by the clerk and asserts: "In view of the ambiguity of the record, we think the court below was correct" (Gov't Br. 92). But, in the first place, the clerk of the district court undertook to certify only "certain original Exhibits" (R. 1075) and therefore in no way contradicted the bill of exceptions (R. 1034). Moreover, an elementary rule prevents the assertion of any such "ambiguity" of the record. The bill of exceptions, approved by both the parties and signed by the court (R. 1068-1069), imports absolute verity and controls and determines conclusively what evidence was submitted to the jury. The certifications by the clerk can neither add to or subtract from the contents of the bill of exceptions and what is shown by it. *Lessor of Fisher v. Cockerell*, 5 Pet. 248, 254; *Chaffee v. Boston Belting Company*, 22 How. 217, 222; *In re M'Call*, 145 Fed. 898, 902; *Moss v. Gulf Compress Co.*, 202 Fed. 657, 659; *Buessel v. United States*, 258 Fed. 811, 816-817; *King v. United States*, 1 F. (2d) 931; *Lau Lee v. United States*, 67 F. (2d) 156, 158. Here the bill of exceptions shows that after having been denied admission in evidence (R. 712) this exhibit was nevertheless included in a large number which were introduced at the close of the trial (R. 1034).

For its second defense of this conduct, the Government suggests that the defendant used an earlier pre-trial statement of Raubunas dated July 27, 1939 (Exhibit 84, read to jury, R. 486-490, and introduced in evidence, R. 1034) to impeach the witness. It then asserts that "In these circumstances petitioners have little standing to complain if Raubunas' second statement (Ex. 92) did in fact reach the

jury" (Gov't Br. 93). However, the contention is contrary to established law. The general rule is that an ex parte pretrial statement corroborative of or consistent with testimony of a witness is not admissible in evidence to confirm his testimony. *Ellicott v. Pearl*, 10 Pet. 412, 438; *Vicksburg & Meridian Railr'd v. O'Brien*, 119 U. S. 99, 101-103; *Brady v. United States*, 39 F. (2d) 312, 315 (C. C. A. 8); *Dowdy v. United States*, 46 F. (2d) 417, 424 (C. C. A. 4) and authorities cited. The Government cites no cases to bring the introduction of this exhibit within the exception to this rule. And it cannot, for the exception recognizes only that, where the testimony of a witness is assailed as a fabrication of a recent date, proof that he gave a similar account of the transaction when no motive existed is admissible. *Malone v. United States*, 94 F. (2d) 281; *Boykin v. United States*, 11 F. (2d) 484, 486; *United States v. Potash*, 118 F. (2d) 54, 57 (C. C. A. 2); *Brady v. United States*, 39 F. (2d) 312, 315 (C. C. A. 8); *Dowdy v. United States*, 46 F. (2d) 417, 424. But here the Government witness was impeached by reference to his first statement given to Government agents on July 27, 1939. Clearly his later statement to the same agents on October 20, 1939, does not, as the Government contends, thereby become admissible. The exception requires that the corroborating statement must be one made when the motive did not exist, before the effect of such account could be foreseen, or where motives of interest would have induced a different statement. And it is obvious that this exception is well limited, for otherwise a designing witness might easily prepare the foundation for corroborating his testimony. *Dowdy v. United States*, 46 Fed. 417, 424 (C. C. A. 4). As was held in *Brady v. United States*, 39 F. (2d) 312, 315 (C. C. A. 8):

If it be true, as claimed by the government, that the witness had made two affidavits, this would certainly not make the contents of the affidavit competent, even

though it might have been proper to show that two affidavits had been made. The admission of this affidavit was violative of the most elementary rules of evidence. It amounted to permitting a witness to corroborate his testimony by producing an ex parte statement he had made out of court, which once admitted in evidence might well have weighed heavily with the jury to the prejudice of appellants. The admission of this exhibit we think reversible error, for which both cases must be reversed.

The third defense of the Government is that, in the cross-examination of Raubunas, "Stewart clearly conveyed to the jury the impression that the second one corresponded with Raubunas' testimony on direct examination * * *. Thus, even if exhibit 92, which is conceded is merely corroborative of Raubunas' testimony, did go to the jury it would hardly have prejudiced petitioners" (Gov't Br. 93). The flaw in this argument is that the portions of the cross-examination to which the Government cites (R. 490, 492-493, 513-514) provide not the slightest confirmation for the Government's statement.

The authorities cited above establish that admission of such a pre-trial statement is reversible error. The Government has failed utterly to sustain its burden of proving that the erroneous and unauthorized submission of this exhibit was not prejudicial to petitioner. *McCandless v. United States*, 298 U. S. 342, 347-348; *Ogden v. United States*, 112 Fed. 523, 527 (C. C. A. 3); *United States v. Dressler*, 112 F. (2d) 972, 978 (C. C. A. 7); *Todd v. United States*, 221 Fed. 205, 208 (C. C. A. 8). In substance, the Government now seeks to minimize the conduct of the prosecutor by assertion that his acts do not constitute reversible error, apparently attempting to reduce them to the class of mere technicalities. In *Miller v. Territory of Oklahoma*, 149 Fed. 331 (C. C. A. 8) the court said:

The zeal, unrestrained by legal barriers, of some prosecuting attorneys, tempts them to an insistence upon the admission of incompetent evidence, or getting before the jury some extraneous fact supposed to be helpful in securing a verdict of guilty, where they have prestige enough to induce the trial court to give them latitude. When the error is exposed on appeal, it is met by the stereotyped argument that it is not apparent it in any wise influenced the minds of the jury. The reply the law makes to such suggestion is: that, after injecting it into the case to influence the jury, the prosecutor ought not to be heard to say, after he has secured a conviction, it was harmless. As the appellate court has not insight into the deliberation of the jury room, the presumption is to be indulged, in favor of the liberty of the citizen, that whatever the prosecutor, against the protest of the defendant, has laid before the jury, helped to make up the weight of the prosecution which resulted in the verdict of guilty.

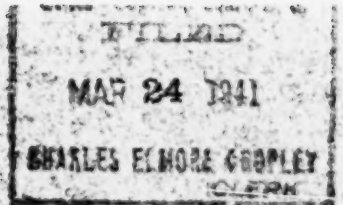
This statement of the general rule has been quoted with approval and applied in *Coulston v. United States*, 51 F. (2d) 178, 182 (C. C. A. 10) and *Singer v. United States*, 58 F. (2d) 74, 77 (C. C. A. 3). And it is peculiarly applicable to the instant case, since it is everywhere recognized that where a case is as weak and doubtful as the Government admits this one to be, then the prejudice to the defendant is so highly probable that its non-existence cannot be assumed. *Berger v. United States*, 295 U. S. 78, 89.

Respectfully submitted,

HOMER CUMMINGS,
WILLIAM D. DONNELLY.

November, 1941.

FILE COPY



30-32

Nos. ~~700-706~~

In the Supreme Court of the United States

OCTOBER TERM, 1940

DANIEL D. GLASSER, PETITIONER

v.

UNITED STATES OF AMERICA

NORTON I. KRETSKE, PETITIONER

v.

UNITED STATES OF AMERICA

ALFRED E. ROTH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

	Page
Opinion below.....	1
Jurisdiction.....	2
Questions presented.....	2
Statement.....	3
Argument.....	10
Conclusion.....	43

CITATIONS

Cases:

<i>Agnew v. United States</i> , 165 U. S. 36.....	18
<i>Alford v. United States</i> , 282 U. S. 687.....	32
<i>Berger v. United States</i> , 295 U. S. 78.....	39
<i>Blitz v. United States</i> , 153 U. S. 308.....	32
<i>Breeze v. United States</i> , 226 U. S. 1.....	14
<i>Brookman v. United States</i> , 8 F. (2d) 803.....	18
<i>Brown v. United States</i> , 32 F. (2d) 953.....	29
<i>Cendagarda v. United States</i> , 64 F. (2d) 182.....	27
<i>Cook v. United States</i> , 138 U. S. 157.....	31
<i>Delaney v. United States</i> , 263 U. S. 586.....	43
<i>District of Columbia v. Clawans</i> , 300 U. S. 617.....	32
<i>Goldstein v. United States</i> , 63 F. (2d) 609.....	36
<i>Hall v. United States</i> , 48 F. (2d) 66.....	29
<i>Hargrove v. United States</i> , 25 F. (2d) 258.....	32
<i>Harrod v. United States</i> , 29 F. (2d) 454.....	29
<i>Houghton v. Jones</i> , 1 Wall. 702.....	34
<i>Johnston v. United States</i> , 154 Fed. 445.....	29
<i>Kettenbach v. United States</i> , 202 Fed. 377.....	32
<i>Ledbetter v. United States</i> , 108 Fed. 52.....	11, 13
<i>Marvel v. Zerbst</i> , 83 F. (2d) 974.....	16
<i>Miller v. United States</i> , 24 F. (2d) 353, certiorari denied, 276 U. S. 638.....	27
<i>Moffatt v. United States</i> , 232 Fed. 522.....	18
<i>Morrison v. United States</i> , 71 F. (2d) 258, certiorari denied, 293 U. S. 589.....	18
<i>People v. Traeger</i> , 372 Ill. 11.....	15
<i>Philadelphia and Trenton Railroad Co. v. Stimpson</i> , 14 Pet. 448.....	34, 35
<i>Rea v. Missouri</i> , 17 Wall. 532.....	32
<i>Renigar v. United States</i> , 172 Fed. 646.....	11, 12
<i>Stockslager v. United States</i> , 116 Fed. 590.....	18

II

Cases—Continued.

	Page
<i>United States v. Breen</i> , 96 F. (2d) 782.....	32
<i>United States v. Gale</i> , 109 U. S. 65.....	18
<i>United States v. Gross</i> , 103 F. (2d) 11.....	32
<i>United States v. Kay</i> , 101 F. (2d) 270, certiorari denied, 306 U. S. 660.....	32
<i>United States v. Manton</i> , 107 F. (2d) 834, certiorari denied, 309 U. S. 664.....	26, 42
<i>United States v. McClure</i> , 4 F. Supp. 668.....	21, 22
<i>United States v. Parker</i> , 103 F. (2d) 857, certiorari denied, 307 U. S. 642.....	18
<i>Walker v. United States</i> , 93 F. (2d) 383, certiorari denied, 303 U. S. 644.....	18, 22
<i>Williams v. United States</i> , 20 F. (2d) 269.....	29
<i>Wills v. Russel</i> , 100 U. S. 621.....	34
<i>Wilson v. United States</i> , 104 F. (2d) 81, certiorari denied, 308 U. S. 574.....	22

Statutes:

<i>Illinois Revised Statutes</i> , 1939, ch. 78;	
Sec. 1.....	15
Sec. 2.....	15
Sec. 24.....	15
Sec. 25.....	15
<i>United States Code</i> , Title 18:	
Sec. 88.....	28
Sec. 91.....	25
Sec. 556.....	14, 28
<i>United States Code</i> , Title 28:	
Sec. 152.....	15
Sec. 391.....	36
Sec. 411.....	15
Sec. 412.....	19

In the Supreme Court of the United States

OCTOBER TERM, 1940

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v.

UNITED STATES OF AMERICA

*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R.
1117-1139) is reported in 116 F. (2d) 690.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 13, 1940 (R. 1139-1140), and petitions for rehearing (R. 1141-1208) were denied January 23, 1941 (R. 1239). The petitions for writs of certiorari were filed February 28, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the record fails to disclose that the indictment was returned in open court by the grand jury.

2. Whether the trial court erred in overruling petitioners' motion to quash the indictment on the ground that the grand jury was illegally constituted because of the exclusion of women therefrom.

3. Whether the trial court abused its discretion in denying petitioners' motion for a new trial based on the alleged improper method of selecting prospective petit jurors.

4. Whether petitioner Glasser was deprived of his right to the effective assistance of counsel.

5. Whether the second count of the indictment sufficiently charged a conspiracy to defraud the United States.

6. Whether Government Exhibits 81A and 113 were properly admitted in evidence.

7. Whether the conduct of the trial judge was such as to deprive petitioners of their right to a fair and impartial trial.

8. Whether the prosecutor was guilty of prejudicial misconduct.

9. Whether there was sufficient evidence to warrant the submission of the question of the guilt of petitioners Glasser and Roth to the jury.

STATEMENT

On September 29, 1939, an indictment in two counts was returned against the petitioners and two others¹ in the District Court for the Northern District of Illinois. The first count is not here involved since it was dismissed at the close of the Government's case upon its election to proceed on the second count (R. 100). The second count (R. 22-37), after alleging that during certain periods the defendants Glasser and Kretske were assistant United States attorneys for the Northern District of Illinois, employed to prosecute in that district all delinquents for crimes and offenses cognizable under the authority of the United States, particularly violations of the federal internal revenue laws relating to liquor, charged in substance that the defendants conspired to defraud the

¹ The two codefendants, Anthony Horton and Louis Kaplan, were convicted (R. 101, 1045) but did not appeal.

United States of its right to be honestly, faithfully, and dutifully represented in such matters in the courts of the United States by an assistant United States attorney free from corruption, improper influence, dishonesty, or fraud. The count alleged broadly that the conspiracy was to be accomplished by the soliciting of moneys from certain persons charged with violating or about to be charged with violating the federal liquor laws, which moneys were to be used to influence and corrupt the defendants Glasser and Kretske in the performance of their official duties.

Petitioners were convicted (R. 101, 1045) and were sentenced as follows: Glasser and Kretske to imprisonment for a period of 14 months and Roth to pay a fine of \$500 (R. 104). On appeal to the Circuit Court of Appeals for the Seventh Circuit the petitioners' convictions were unanimously affirmed (R. 1117-1140).

The extensive summary of the Government's evidence contained in the opinion in the Circuit Court of Appeals (R. 1122-1129) renders it unnecessary to do more than briefly outline, with appropriate record references for the convenience of the Court, the *modus operandi* of the conspiracy and the parts played therein by the defendants. While the petitioner Kretske concedes that there was sufficient evidence to have made out a case for the jury against him (Pet. 3), the evidence respecting the part played by Kretske in the conspiracy is

necessarily included in the following summary, since he was a pivotal figure.

Petitioner Glasser was the Assistant United States Attorney in charge of liquor cases (R. 914, 917) in the office of the United States Attorney for the Northern District of Illinois from shortly after March 1935 (R. 911) until April 1939 (R. 912). Petitioner Kretske was also an Assistant United States Attorney in that office from October 1934 (R. 802) until April 1937 (R. 801) and assisted Glasser in the prosecution of liquor cases (R. 190, 801). After his resignation from office, Kretske practiced law in Chicago (R. 753, 803). Petitioner Roth was an attorney in private practice (R. 833) to whom Kretske referred various persons who were charged with violations of the liquor laws and whose cases were involved in the instant conspiracy (R. 835, 861, 872, 875, 878). The defendant Horton was a bondsman who conducted his business in the Federal Building in Chicago where the office of the United States Attorney is located (R. 750, 765). The defendant Kaplan was engaged generally in the illicit alcohol business in and around Chicago and was a large-scale operator of illicit stills in that vicinity. (R. 452, 453, 460, 463, 467, 473, 530; Ex. 113, R. 532; Ex. 81, R. 533).

Kaplan frequently informed his associates that he had protection through the "Federal Building" and that he paid out money for this purpose (R.

452, 454). One of Kaplan's men, by following Kaplan and by questioning him, ascertained that Kaplan was periodically contacting Kretske and Glasser (R. 455, 457, 462). Upon the seizure of two stills operated by Kaplan and his associates (R. 458, 538), Kaplan collected money from his partners for the purpose of "fixing" the cases, telling them not to worry about anything (R. 457-460, 465); that after the Alcohol Tax Unit investigators had done their work, the cases were out of their hands (R. 460, 466). These alcohol violations were brought to Glasser's attention by means of the investigator's reports (R. 529-530; Ex. 81, R. 529; Ex. 113, R. 532) and by many conferences and discussions (R. 444-452, 529-530, 532). Glasser was satisfied with the available evidence against Kaplan (R. 530). In one of these cases "no bills" were returned by the grand jury as to the three most important of the accused, including Kaplan (R. 530), the case having been presented to and withdrawn from three prior grand juries by Glasser (R. 528-531), and in the other case "no bills" were returned as to all the accused (R. 528). Available evidence was not used by Glasser upon these presentations (R. 530-533, 536-537, 590, 602). One of the accused paid \$100 to Kretske for a "no bill" immediately prior to such action by the grand jury (R. 542). The members of the grand jury followed Glasser's advice as to who should and who should not be indicted (R. 589). The presen-

tation of one of these cases was, in the opinion of the grand jurors, so unsatisfactory that they requested its re-presentation (R. 589-591, 604-606).

A third still operated by the same group was seized November 17, 1937 (R. 468-469, 541), and money was shortly thereafter paid by one of the group to Kretske to "fix" the case on Kretske's assurance that its disposition would be the same as in the two previous cases (R. 470, 542). A year later, November 1, 1938, an indictment was returned and Kretske was shortly thereafter paid money by two others of the group on the understanding that they would not go to jail (R. 543-545) and that Kretske would furnish a lawyer and take care of Glasser (R. 543). Petitioner Roth acted as the attorney and the case was continued (R. 546-547). Kretske shortly thereafter, and at about the time when Glasser resigned from office, said that he could do nothing in the case as "they had taken the alcohol cases away from his friend" (R. 547). The indicted defendants were subsequently convicted by Glasser's successor in office (R. 473, 547). Glasser sought and secured a written statement from an attorney who withdrew from the case to the effect that this attorney had not done so because of any belief that the case had been "fixed" (R. 618; Ex. 128, R. 619).

The many other cases involved in the conspiracy present a comparable picture.

Kretske and Horton solicited money for the fixing of many cases and in most instances re-

ceived it (R. 225-231, 241, 244, 262, 297-300, 305-307, 370, 413, 420, 469-472, 499, 542-550, 652). In one case where the money was not forthcoming when solicited the person solicited was shortly thereafter indicted (R. 300). In another case, because of exceptional circumstances, Kretske, after discussing the case with Glasser, refused to accept the money (R. 305).

Upon the receipt of payments prosecutive action would generally cease (R. 194-196, 226, 232, 258, 261, 267, 268, 270, 271, 276, 346, 522, 663), the matter would be stricken from the docket (R. 236, 350), or the accused would be discharged (R. 289, 297, 370, 414). Money paid for similar purposes, through persons not indicted, accomplished similar results (R. 307-310). In many of these cases Kretske arranged for Roth to act as the attorney for the defendants (R. 228, 230, 273, 302, 345, 546, 835, 861, 872, 874, 875, 878). Persons paying for these favors were invariably advised not to worry, that everything would be taken care of (R. 230, 369-373, 460-461, 458, 463, 465, 620, 621), and Glasser was known during the negotiation of these transactions to be the person whose conduct was to be influenced (R. 230, 297, 301, 304, 306, 543, 547, 631, 668, 670).

There was evidence from which the jury could find that the disposition of these cases was the direct result of some act or failure to act on the part of Glasser (R. 194-195, 220, 232, 250-251,

289, 297, 309, 310, 365, 371, 413-414, 464-465, 528-529, 530-533, 589-591, 602, 633, 663, 668, 706-711).

The record discloses many instances of Glasser's failure to utilize available information and evidence in securing indictments and in otherwise prosecuting cases (Ex. 74, R. 406-408; Ex. 120, R. 585-587, 528-533, 602, 609, 589-590, 451-452, 536-537; Ex. 160, R. 706-711, 250, 441-443, 218-224, 883, 199, 204, 209, 386).

In one case the evidence disclosed that the prosecution by Glasser was the result of constant prodding by an Alcohol Tax Unit investigator and that Glasser was doing what he could to hinder a successful prosecution (R. 300-304, 706-711).

There is direct evidence of Glasser's extra-official association and cooperation with Kaplan and with other large scale violators who, upon payment of money to Kretske, Horton or to one Miller, were successful in avoiding prosecution (R. 302, 304, 457, 462, 563, 709-711).

In one instance information concerning a liquor violation in which one Nick Abosketes was involved was disclosed confidentially in Glasser's office (R. 649). Shortly thereafter one Brantman, who had known Kretske many years (R. 650), solicited, on Kretske's behalf, \$3,000 from Abosketes to stop Abosketes' indictment (R. 664-673, Ex. 134, R. 666). This money was later turned over to Kretske by Brantman (R. 652). Abosketes was later informed by Brantman that "everything was

under control" (R. 670) and he was never indicted (R. 663, 666).

In attempting to bribe the United States District Attorney for the Northern District of Indiana so as to prevent the return of a certain indictment (R. 680-682), Roth stated, "Well, that is the way we handle cases in Chicago sometimes" (R. 682).

There was evidence that Kretske and Roth attempted to prevent the investigation leading to the indictment in the instant case (R. 685).

ARGUMENT

I

Petitioners contend (Glasser, pp. 15-19; Kretske, pp. 13, 20; Roth, pp. 26-28) that the record fails to disclose that the indictment was returned in open court by the grand jury and that, hence, the District Court erred in overruling their motion to quash made on that ground (R. 42, 141-149, 151). We submit that the Circuit Court of Appeals correctly held this contention to be without merit (R. 1118-1119).

The *placita* (R. 1) discloses the convening of the District Court for the Northern District of Illinois, Eastern Division "on the first Monday of September [1939] (it being the twenty-ninth day of September the indictment was filed)," and recites the presence of the various judges of the court, including District Judge Stone, who sat as a member of the court by designation and who tried the instant case, the marshal, and the clerk.

On the face of the indictment in the clerk's own handwriting (see R. 1119) appears the statement "Filed in open court this 29th day of Sept., A. D. 1939, Hoyt King, Clerk," preceded by the notation "A true bill, George A. Hancock, Foreman" (R. 38). These records, which, of course, import verity, sufficiently disclose, in our opinion, that the indictment was returned by the grand jury in open court.

It will be noted that in contrast with the clerk's entry "filed" in *Renigar v. United States*, 172 Fed. 646, 647 (C. C. A. 4th), cited by petitioners, the entry of the clerk in the instant case was "Filed in open court." Obviously, if the indictment had not been returned in the usual manner but had merely been handed by the foreman of the grand jury to the clerk, the clerk's entry would simply have been that the indictment was "filed," as in the *Renigar* case. There is no proof in the present record that the indictment was not returned in open court.²

² While it was stated in *Ledbetter v. United States*, 108 Fed. 52 (C. C. A. 5th), that an entry by the clerk on the indictment "filed in open court" was not sufficient to identify the indictment as properly returned to the court by the grand jury, the issue was complicated by the fact that the indictment was captioned "Circuit Court" rather than the district court; and it was essential that the indictment have been returned in the district court. Moreover, the Circuit Court of Appeals held that the formal defect was immaterial since the bill of exceptions showed that the indictment had in fact been returned in the District Court and the "oversights and

In addition, immediately after the above notation that the indictment had been filed in open court there appears the following (R. 38-39):

on the 29th day of September A. D. 1939, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause,³ before the Honorable James H. Wilkerson District Judge appears the following entry, to wit:

UNITED STATES DISTRICT COURT,

Northern District of Illinois.

(Date) Sept. 29, 39.

Cause No. -----

Title of Cause-----

Df. Ex. 1

11/7/39.

Brief Statement of Motion

The Grand Jury return 4 Indictments
in open Court. Added 10/30/39

Name of moving Counsel

Representing

Order discharging Grand Jury of Sept.
Term 1939.

Name of opposing Counsel (if any)

JHW

Hand this memorandum to the Clerk.

omissions" could have been corrected by the trial court at the time this proof was made (p. 55).

In the *Renigar* case, *supra*, the opinion indicates that the grand jury did not in fact return the indictment in open court.

³ The title and number of the present case appears at the top of R. 38.

It is evident that this notation explicitly identifies the indictment in the instant case as one of the four indictments returned by the grand jury in open court. Also, the initials "JHW", being the initials of District Judge Wilkerson, and the notation "Df. Ex. 1, 11/7/39", together with various references to a motion, lend support to the view that Judge Wilkerson ordered that the record be made to show specifically that the indictment was returned in open court by the grand jury, so that that information would be available in connection with the hearing of defendants' motion to quash which was set for November 7, 1939 (R. 140; Glasser's petition, p. 17).⁴ If this entry showing the return of the indictment in open court by the grand jury was made without order of the court, as petitioner Glasser asserts (Pet. 17), that could have been easily established. There is nothing in the record to indicate that any such attempt was made.

At all events, it is certainly clear from the record that the indictment was returned by the grand jury and there is at most an imperfect disclosure that it was returned in open court, without any actual showing that it was not so returned. There is,

⁴ Petitioners made no effort to prove and do not contend that the indictment was not in fact returned in open court. Accordingly, we see no reason why the notation quoted above may not properly be regarded as a clarification of the record, *nunc pro tunc*. While the Court, in the *Ledbetter* case referred to an "order entered *nunc pro tunc*," we see no reason why a formal order should be necessary, where the facts are not in dispute.

moreover, no assertion in the motion to quash, the supporting affidavit or the petitions for writs of certiorari that petitioners were prejudiced by the alleged defect. The defect was, at most, formal and, in the absence of any showing of prejudice, objections of this character are not favored. *Cf. Breese v. United States*, 226 U. S. 1, 11; U. S. C., Title 18, Sec. 556.⁵

II

All of the petitioners contend, although petitioner Glasser does not at this time argue the point (Glasser, p. 8; Kretske, pp. 13, 20; Roth, pp. 31-34), that the District Court erred in denying their motion to quash the indictment on the ground that the grand jury was illegally constituted because of the deliberate exclusion of women's names from the jury box from which the grand jurors were drawn. (R. 42, 141-151.)

Petitioners' argument, the substance of which is apparently embodied in Roth's petition, is that under the laws of the State of Illinois, effective prior to the summoning of the grand jury in the instant case,⁶ it was required that the names of

⁵ This section provides, in part, that—

"No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, * * *."

⁶ The grand jury was summoned on August 25, 1939 (R. 144-145, 148, 1118). On May 12, 1939, there were approved

women be placed on jury lists throughout the State, and that the jury commissioner and the court clerk, by virtue of U. S. C., Title 28, Sec. 411,⁷ should have heeded this requirement when making up the grand jury list.

two amendatory acts of the legislature of Illinois. One, Section 1 of Chapter 78 of the Illinois Revised Statutes, 1939, applies to counties not having jury commissioners (see Illinois Revised Statutes, Chapter 78, Section 2), and provides that "The county board of each county shall, at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct of the county, giving the place of residence of each name on the list, to be known as the jury list." The other, Section 25 of Chapter 78 of the Illinois Revised Statutes, 1939, applies to counties having jury commissioners (see Illinois Revised Statutes, 1939, Ch. 78, Sec. 24) and provides, in part, that "The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list."

These amendatory acts became effective July 1, 1939 (Article IV, Section 12, Illinois Constitution). On August 8, 1939, the Supreme Court of Illinois upheld the constitutionality of Section 25 of Chapter 78. *People v. Traeger*, 372 Ill. 11.

⁷ This section provides—

"Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications * * * and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned."

In disposing of the petitioners' contention, the Circuit Court of Appeals stated (R. 1118) that "The Northern District of Illinois [in which the indictment was returned] is composed of 18 counties of the State of Illinois. Under the Act in question the county boards of 17 of these counties were privileged to wait until September 1, 1939 before including women on the jury lists."*

It is contended, however, that the Circuit Court of Appeals erroneously construed Section 1 of Chapter 78 of the Illinois Revised Statutes because the language of that section compels the conclusion that the county boards were required to act before September to make effective the then existing law. In so contending emphasis is placed on the words "when necessary for the purpose of this Act." It is obvious, however, that this language was utilized in order to permit the county boards not only to make up the jury lists at or before the time of their September meeting, but also to allow them to make up such lists "at any time thereafter" when neces-

* It was conceded by the Government in its brief in the Circuit Court of Appeals that "it was the law in Cook County that Jury Commissioners should place women on jury lists on and after July 1, 1939" (p. 18), but it is evident from the defendants' affidavit in support of their motion to quash that 11 of the grand jurors were drawn from counties in the Northern District of Illinois other than Cook County (R. 144-145; see U. S. C., Supp. V, Title 28, Sec. 152). Of course the court clerk and jury commissioner were entitled to draw the grand jury from the entire District. *Marvel v. Zerbst*, 83 F. (2d) 974 (C. C. A. 10th).

sary for the purpose of the Act (Footnote 6, *supra*, p. 14.)

It is also argued that the Federal court clerk and jury commissioner were not controlled by the State law fixing the meeting time of the county board as of September. The clerk and the jury commissioner were, however, commanded by U. S. C., Title 28, Sec. 411 (Footnote 7, *supra*, p. 15) to place upon jury lists only those who were at the time they were summoned eligible for jury service in the highest court of law in the State for which jurors were selected. Section 1 of Chapter 78, although effective on July 1st, prior to the summoning of the grand jury in the instant case, does not purport to make women immediately eligible for such service, but only when their names were placed on the jury list by the county boards, and the boards were privileged to defer their action until their September meeting. In order for the petitioners to prevail it was, under U. S. C., Title 28, Sec. 411, at least necessary for them to have shown that in the 17 counties in the Northern District of Illinois utilizing county boards in the preparation of jury lists, those boards had, prior to the summoning of the grand jury in the instant case, placed women on their jury lists. The record contains no such showing.

In any event, as the Circuit Court of Appeals stated (R. 1118), there was no allegation in the motion to quash or supporting affidavit that petitioners were in any wise prejudiced by the selection

of grand jurors or that any one of them was incompetent or disqualified. As this Court said in *United States v. Gale*, 109 U. S. 65, 70, "It is not complained that the [grand] jury actually empanelled was not a good one; but that other persons equally good had a right to be placed on it." The rule is well settled that a defendant has no cause of complaint because of alleged irregularity in drawing a grand jury which did not prejudice him. *Agnew v. United States*, 165 U. S. 36, 44.⁹ The burden is upon him to show by the averment of specific facts that he was prejudiced. *Brookman v. United States*, 8 F. (2d) 803, 806 (C. C. A. 8th). The burden was not met in the instant case, and the motion to quash was properly overruled.¹⁰

III

The petitioners also contend that reversible error resulted from the overruling of their motion for a new trial made on the ground that all the names of women which were placed in the box from which the petit jurors were selected were presented to

⁹ See also *United States v. Parker*, 103 F. (2d) 857, 859 (C. C. A. 3d), certiorari denied, 307 U. S. 642; *Walker v. United States*, 93 F. (2d) 383, 391 (C. C. A. 8th), certiorari denied, 303 U. S. 644; *Morrison v. United States*, 71 F. (2d) 358, 359 (C. C. A. 5th), certiorari denied, 293 U. S. 589; *Mofatt v. United States*, 232 Fed. 522, 528 (C. C. A. 8th); *Stockslager v. United States*, 116 Fed. 590, 596 (C. C. A. 9th).

¹⁰ There was here, of course, no systematic and prejudicial exclusion of persons of the defendant's class, eligible for jury service, as in several of the cases cited by petitioner Kretske (Pet. 13).

the clerk of the District Court by the Illinois League of Women Voters; that all the women whose names were presented by the League had attended jury classes maintained for the purpose of instructing prospective jurors; that the lectures given to such classes represented the views of the prosecution; that the names of women otherwise qualified and eligible for jury service were deliberately excluded from the jury box; that they were thereby deprived of trial by a fair and impartial jury and denied due process of law; and that knowledge of the exclusion as jurors of women other than those recommended by the Illinois League of Women Voters was first acquired after verdict (Glasser, pp. 12, 13, 15; Kretske, p. 14; Roth, pp. 12-14).¹¹ Petitioner Glasser also urges that the court clerk and jury commissioner unlawfully delegated to the Illinois League of Women Voters their statutory duty under U. S. C., Title 28, Sec. 412,¹² since the names of all the women

¹¹ It does not appear that petitioner Kretske sought a new trial on this ground. The only affidavits appearing in the record which raised the question are those of petitioners Glasser and Roth (R. 1049-1057).

¹² This statute provides—

“All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge

placed in the jury box were those presented to them by this League. We submit that these contentions are without merit.

Preliminarily it should be pointed out that the record merely contains a notation by the trial court, in denying the defendants' motion for a new trial, apparently orally made, granting petitioners Glasser and Roth leave to file certain affidavits (R. 103). It is upon the allegations in two of these affidavits that petitioners' present contentions are predicated (R. 1049-1057). However, petitioners have failed by their bill of exceptions to disclose what transpired at the hearing on their motion for a new trial. There is, therefore, nothing to show the factual situation presented to the trial court or the grounds upon which that court may have predicated its decision. For aught that is known, women other than those recommended by the Illinois League of Women Voters may have been placed in the jury box. Indeed, the very Bar Journal article upon which petitioner Glasser re-

senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein."

lied in the trial court shows that at least one non-member of the League was summoned (R. 1052). Moreover, so far as we know, the motion may have been denied because the facts disclosed that the defendants' objection was not made at the first opportunity.

In any event the petitioners' complaint was first raised on motion for a new trial. The disposition of such a motion is, of course, committed to the sound discretion of the trial court and its action may not be reversed unless there has been an abuse of discretion. Petitioners make no showing that such discretion was abused in the present case.

With respect to those whose names are placed in the jury box from which are selected grand and petit jurors, the statute governing the drawing of jurors places only two specific limitations upon the court clerk and the jury commissioner. They may put in the box only the names of qualified persons and must place therein the names of at least three hundred such persons. While, of course, no organization or group may be allowed to dictate to them what names should be placed in the box and they may not systematically exclude any qualified class, the purpose of the statute is, as was stated in *United States v. McClure*, 4 F. Supp. 668, 671 (E. D. Pa.), "to provide for the highest type of jurymen in the federal courts and to insure their selection without any risk of bias, prejudice, local feeling, or unfitness of any kind." There is thus

reposed in the court clerk and the jury commissioner much discretion in the fulfilling of the duties and responsibilities imposed upon them by the law, and the decisions indicate that so long as they do not abrogate their functions they are permitted, to promote the purposes of the statute, to exercise a reasonable degree of selectivity in the determination of those whose names are placed in the box for jury service and that they may predicate their action upon advice and information obtained from appropriate sources. *Walker v. United States*, 93 F. (2d) 383, 390-391 (C. C. A. 8th), certiorari denied, 303 U. S. 644; *Wilson v. United States*, 104 F. (2d) 81, 82, (C. C. A. 5th), certiorari denied, 308 U. S. 574; *United States v. McClure*, *supra*.

In the affidavits filed by petitioners Glasser and Roth in the trial court there is nothing to show that the Illinois League of Women Voters were attempting to dictate that only the names of those selected by that League should go into the jury box. These affidavits stated only that the women's names placed in the jury box were taken from a list prepared, and presented to the clerk by the League. There was no allegation in these affidavits that any of these women did not possess the necessary qualifications, and the only objection which petitioners raise to their qualifications is the assertion in Glasser's affidavit that in the classes of the League which they had attended the lecturers had presented "the views of the prosecution" (R.

1050), an assertion which finds no support in the Bar Journal article upon which his attack was predicated (R. 1052-1057) and an assertion, moreover, which cannot be adequately appraised in view of the absence from the record of what transpired at the hearing on the motion for a new trial. It is, moreover, of significance that neither below nor here is it asserted that any women who attended the jury classes of the Illinois League of Women Voters served on the jury which tried and convicted the petitioners. Under the circumstances we submit that there has been no showing that the trial court abused its discretion in denying the motion for a new trial.

IV

Petitioners Glasser (pp. 8-12) and Roth (pp. 30-31) contend that the former was deprived by the trial court of his right to the effective assistance of counsel ¹³ because Glasser's attorney, Stewart, was assigned by the trial court to represent Kretske when it developed that the latter's counsel was engaged in a State court trial. However, the contention is meritless.¹⁴

¹³ It is difficult to perceive how Roth is in any position to urge this point since he was represented throughout the trial by his own attorney (R. 96, 186), and thus could hardly have been affected by any alleged lack of the effective representation of Glasser.

¹⁴ For the circumstances which resulted in the appointment of Stewart to represent Kretske, see R. 41, 95-97, 173-185.

Outside of Glasser's mere general statement that Stewart's joint representation of him and Kretske resulted in the failure to cross-examine and to make objections that would have been advantageous to Glasser but probably detrimental to Kretske, Glasser gives only one example, in a trial consuming over a month (R. 179, 1045) where any alleged injury occurred to him (pet. 10). It is apparent, however, from the example given that the witness Brantman, who had testified that he had paid \$3,000 to Kretske, also stated that he did not know petitioner. There was obviously no necessity of cross-examination to elicit a fact which the witness had already stated in the direct examination.¹⁵

A mere thumbing of the record discloses that Stewart vigorously defended Glasser's interests at the trial by objections to Government testimony, cross-examination of Government witnesses, and direct examination of Glasser and his witnesses.¹⁶ Indeed, Stewart, whom Glasser describes as an "eminent member of the local bar" (Pet. 9), appears to have taken the leading defense role (see e. g. R. 750).

¹⁵ The reason for not cross-examining Brantman on Kretske's behalf is amply indicated in the colloquy occurring at the time the sentences were imposed. (See R. 1061-1062.)

¹⁶ See, e. g., R. 200, 209, 214, 219, 246, 250, 252, 276, 293, 303, 339, 347-348, 390, 398-399, 441, 444, 446, 534, 565, 585, 616, 716, 722, 724, 737, 743, 744, 745, 783, 784, 796, 885, 886, 890, 911, 1060, 1065.

Also, Glasser does not refer to the fact that he had another attorney, Callaghan, who filed on his behalf certain trial motions and pleadings (R. 54, 61, 65, 142), and who was present throughout the trial. This attorney objected on several occasions to Government testimony (R. 194-195, 399, 545, 624, 679-680, 703), and examined various witnesses on behalf of Glasser (R. 823-829, 831, 910, 1028).

V

Petitioners Glasser (pp. 50-51) and Roth (p. 30) contend that the indictment charged a conspiracy to commit a substantive offense which involved concerted action, i. e., to violate U. S. C., Title 18, Sec. 91,¹⁷ relating to the bribery of Government officers, and therefore was fatally defective.

At the outset, it should be noted that there is not here involved the first count of the indictment which charged a conspiracy to violate the bribery statute. At the end of the Government's case the Government elected to proceed on count two and count one was dismissed (R. 100). It follows therefore that the only count here involved is count two.

That count did not charge a conspiracy to commit the crime defined by the bribery statute¹⁸ but

¹⁷ See appendix to Glasser petition, p. 53.

¹⁸ When the prosecutor said in his argument on the defendants' demurrer that "This indictment follows very closely the

was laid under that portion of the conspiracy statute which penalizes conspiracies "to defraud the United States in any manner or for any purpose." U. S. C., Title 18, Sec. 88. It charged that the defendants conspired to "defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by * * * an Assistant United States Attorney to prosecute certain delinquents for crimes and offenses cognizable under the authority of the United States as the same should be presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud * * *." (R. 28.) The allegations with respect to the solicitation of money to be paid to Glasser and Kretske in order to influence them in their official acts as Assistant United States Attorneys (R. 29 et seq.) were obviously but the detailing of means whereby the conspiracy was to be accomplished. The count consequently is no different from that which was before Justice Sutherland, Justice Stone, and Circuit Judge Clark in *United States v. Manton*, 107 F. (2d) 834 (C. C. A. 2d), certiorari denied, 309 U. S. 664, in which Mr. Justice Sutherland, in writing the opinion, said (p. 839):

language in Section 91," (R. 154) it would appear from his other observations that he was referring to the first count of the indictment. (See R. 158.)

It is further urged that the indictment charges, and that the government sought to prove, a conspiracy to accept and secure bribes, and that this is not an indictable conspiracy. We do not stop to inquire whether in the present case the conclusion would follow from the premises, since it is clear that the premises are not true. * * * The indictment does not charge, as a substantive offense the giving or receiving of bribes; nor does it charge a conspiracy to give or accept bribes. It charges a conspiracy to obstruct justice and defraud the United States, the scheme of resorting to bribery being averred only to be a way of consummating the conspiracy and which, like the use of a gun to effect a conspiracy to murder, is purely ancillary to the substantive offense. The long argument upon the point consequently fails for lack of foundation to give it support.¹⁹

The Circuit Court of Appeals consequently properly held the *Manton* case to be dispositive (R. 1121-1122).

While all of the petitioners assert that the indictment was fatally defective because it was too vague and indefinite, only Roth argues the point (Glasser, p. 50, Kretske, p. 13, Roth, pp. 28-30). It will be noted that there is no contention that the

¹⁹ See also *Miller v. United States*, 24 F. (2d) 353, 358-359 (C. C. A. 2d), certiorari denied, 276 U. S. 638; *Cendagarda v. United States*, 64 F. (2d) 182, 184 (C. C. A. 10th).

second count of the indictment, the one here involved, did not charge the necessary elements of a conspiracy to defraud under U. S. C., Title 18, Sec. 88, and it is apparent from an examination of the count that the petitioners could not have been in doubt as to the nature of the conspiracy charged or as to the manner in which it was to be effected. The only complaint is that the count did not sufficiently particularize such details as "persons, times, places, and circumstances." These, however, were details which it was the function of a bill of particulars to supply, and the District Court directed the Government to furnish such particulars (R. 76, 160). It did so in a bill which specified in great detail the names and histories of the cases with which the conspiracy was concerned; the time, places, amount, and circumstances of each payment of money and the names of the defendants soliciting each payment; the character of the official misconduct, etc. (R. 77-89). There is no claim of any prejudice or surprise following the furnishing of this bill of particulars.

If there was any defect in the count it was a formal one which did not prejudice the petitioners and was remedied by the bill of particulars. Under U. S. C., Title 18, Sec. 556 ²⁰ there is consequently no basis for a reversal.

²⁰ See footnote 5, *supra*, p. 14.

VI

All of the petitioners contend that Government's Exhibits 81A and 113 (R. 445-452; 529; 532-533)²¹ were improperly admitted in evidence (Glasser, p. 31, Kretske, pp. 44-49, Roth, p. 24). However, the trial judge twice informed the jury that these two exhibits were received in evidence only against Glasser and not against any of the other defendants (R. 533-534, 539).²² It therefore follows that neither Roth nor Kretske is in a position to urge the point.²³

²¹ These exhibits are not printed in the record and the petitioners have not had them transmitted to this Court.

²² While the trial court stated that "At some further stage of the proceedings I may advise you with reference to its competency as to the other defendants * * *," (R. 534) it should be pointed out that there is nothing in the record to indicate that it was ever admitted against any other defendant than Glasser. Moreover, since the petitioners have not incorporated in their bill of exceptions the trial judge's charge to the jury, it must be assumed that the jury was properly instructed that the exhibits should be considered only against Glasser. Cf. *Hall v. United States*, 48 F. (2d) 66, 68 (C. C. A. 9th); *Brown v. United States*, 32 F. (2d) 953, 954 (App. D. C.); *Harrod v. United States*, 29 F. (2d) 454, 455 (App. D. C.); *Williams v. United States*, 20 F. (2d) 269, 270 (App. D. C.); *Johnston v. United States*, 154 Fed. 445, 449 (C. C. A. 9th).

²³ Petitioner Kretske asserts that the trial court permitted these Exhibits to be read to the jury as evidence against the defendant Kaplan and held that it was for the jury to determine if they were evidence against anyone else (Pet. 18, 44). The record clearly shows that they were admitted only as against Glasser (R. 534, 539). Kaplan did not appeal his conviction (R. 1117).

As against Glasser, the exhibits were unquestionably competent evidence.

While Exhibits 81A and 113 are not printed in the record and the petitioners have not had them forwarded to this court, it would appear that they are the reports of Alcohol Tax Unit investigators relative to the seizure of stills on Western Avenue, Chicago, and in Spring Grove, Illinois, and detailed information which the agents had uncovered with respect to the parts played by the prospective defendants, their personal history, etc. (R. 445-451, 532-533, 1080-1081, 1131-1132; Kretske's petition, pp. 44-47). These reports were turned over to the United States Attorney's office by the Alcohol Tax Unit (R. 451-452, 532) and involved two of the cases in which, it was the Government's position, the official decisions and actions of Glasser were influenced pursuant to the conspiracy charged in the indictment. (See, e. g., bill of particulars, R. 82, and opinion below, R. 1125-1126; 1131-1132.) In these two cases, although the reports implicated certain individuals, a "No bill" was returned against them (R. 1125-1126). These reports were of course not offered for the purpose of proving the commission of the liquor violations therein described, but to show what Glasser had before him when he acted in these cases. As the Circuit Court of Appeals said "The information contained in the reports together with Glasser's conduct in these cases threw light upon the question whether the

United States was being deprived of the honest and conscientious services of an assistant United States Attorney" (R. 1132). Also, in the light of these reports the jury was better able to appraise any attempted explanation by Glasser of his conduct of the cases and of the failure of the grand jury to indict certain of those named in the reports. The reports were consequently clearly competent.

Cook v. United States, 138 U. S. 157, is not in point. In that case the jury was permitted, under an instruction of the trial court, to consider a report of a murder made by the Attorney General of a state to the Governor as substantive evidence upon the question of whether the defendants had committed the murder.

VII

Petitioners contend that the trial judge failed to maintain an attitude of impartiality, and assert that he undertook the function of a prosecutor by examining petitioners and their witnesses in a hostile manner, restricted petitioners' right of cross-examination, and made remarks prejudicial to them. They also assert that the judge undertook the role of a witness by making certain statements relative to criminal cases in Wisconsin against one Nick Abosketes (Glasser, pp. 24-31; Kretske, pp. 20-38; Roth, pp. 14-23).

In the first place, it is well settled that federal judges have the right, in the interest of eliciting

the truth, to interrogate both parties and witnesses in a criminal case,²⁴ and the extent of their participation in such interrogation is a matter within their sound discretion. *United States v. Kay*, 101 F. (2d) 270, 272 (C. C. A. 2d), certiorari denied, 306 U. S. 660. Similarly, the scope and extent of cross-examination is within the discretion of the trial judge (*Dist. of Columbia v. Clawans*, 300 U. S. 617, 632; *Alford v. United States*, 282 U. S. 687, 694; *Blitz v. United States*, 153 U. S. 308, 312), and not subject to review in the absence of abuse. Cf. *Rea v. Missouri*, 17 Wall. 532, 542.

Petitioners have selected from the voluminous record many piecemeal excerpts, showing statements made and questions asked by the trial court. Obviously, divorced from its context, it may not be possible to discern the propriety of each incident. And it should be noted that in the majority of the many instances cited by petitioners as examples of alleged improper statements and interrogations by the court, no objection was taken. (See, e. g., R. 196, 232, 243, 273-274, 297, 307-310, 346, 348-349, 602, 615, 625, 627-628, 644-646, 816-817, 850-851, 941, 943, 990-991, 1000-1002.)

²⁴ *United States v. Gross*, 103 F. (2d) 11, 13 (C. C. A. 7th); *United States v. Breen*, 96 F. (2d) 782, 784 (C. C. A. 2d); *Hargrove v. United States*, 25 F. (2d) 258, 259 (C. C. A. 8th); *Kettenbach v. United States*, 202 Fed. 377, 385 (C. C. A. 9th); certiorari denied 229 U. S. 613.

There is clearly no merit to the principal complaints. The court's statements that two indictments were returned in Wisconsin against Abosketes²⁵ and that he pleaded guilty and was sentenced on one of them were not improper. Not only was no objection taken to the remarks but, on the contrary, there was acquiescence in them, Glasser's counsel stating that "We will accept your Honor's credibility" (R. 1030). Further, Abosketes, who was a Government witness, had previously testified that he had been convicted on a liquor law indictment in Wisconsin before the same judge who presided in the instant case (R. 663, 671-672).

Nor did the trial court improperly interrupt the direct examination of defense witness Judge Igoe, formerly United States Attorney and Glasser's superior. The record shows that Glasser had been endeavoring to establish that Exhibit 160, an Alcohol Tax Unit report, was the identical report which he had discussed with Judge Igoe and that the latter, after reviewing it, approved Glasser's decision to prosecute a number of the defendants named therein for substantive offenses under the internal revenue laws and not for conspiracy, as

²⁵ The Government's testimony had shown that Abosketes was connected with the operation of an illicit still in the Northern District of Illinois, that this had been reported to Glasser by the Alcohol Tax Unit, and that after the payment by Abosketes of \$3,000 to one Brantman, who turned it over to Kretske, nothing further happened so far as Abosketes was concerned (R. 647-649, 650-662, 664-673).

recommended in the report. The agent who had prepared the report, however, had previously testified that he attended the conference. between Glasser and Judge Igoe regarding the case in question and that the report was not submitted to the United States Attorney's office until after such conference. (See R. 707.) Because of this testimony the court indicated that it was his impression that Judge Igoe had not examined Exhibit 160 when he discussed the case with Glasser and in order to verify this impression he interrupted the former's direct examination to ask the agent, who was in the courtroom, whether the report was completed at the time of the conference. The agent replied in the negative. (R. 901-903.) Obviously, the court was merely trying to refresh Judge Igoe's recollection. Moreover, Judge Igoe subsequently testified that he saw the report later on and was not in favor of handling the case as a conspiracy case (R. 903).

With respect to the court's ruling that the cross-examination of former United States Attorney William J. Campbell must be limited to the scope of his direct examination,²⁶ it need only be said that such is the established rule of practice in the federal courts. *Wills v. Russel*, 100 U. S. 621, 625; *Houghton v. Jones*, 1 Wall. 702, 706; *Philadelphia*

²⁶ This consisted merely of a denial that on the day the indictment was returned he informed Glasser that he "wanted to tell the grand jury that there was nothing in your official conduct that would require investigation" (R. 1041).

and *Trenton Railroad Co. v. Stimpson*, 14 Pet. 448, 460. Moreover, no objection was made to the ruling; Glasser's counsel merely stated that if he was so limited there would be no cross-examination (R. 1042).

Glasser also complains (Pet. 30-31) that the trial judge refused to permit him to introduce in evidence a report of the April, 1937, grand jury, while on the other hand he allowed the Government to introduce two Alcohol Tax Unit reports, Exhibits 81A and 113. However, it is plain that the grand jury report (R. 789-795) was merely a criticism of the investigation by the Alcohol Tax Unit of liquor law violations in general, from which nobody could ascertain what particular case or cases the grand jury had in mind; while the two Exhibits pertained to particular cases where Glasser's official actions were allegedly influenced pursuant to the conspiracy charged in the indictment (see *supra*, pp. 30-31). Clearly, the trial court was correct in holding that the grand jury report was not competent evidence (R. 795).²⁷

²⁷ Kretske's petition contains two lengthy quotations from the record of examination of Glasser by the court, which examination, he claims, was improper (Pet. 34-38). But aside from the fact that Glasser did not object in either instance and the interrogation did not in anywise relate to Kretske, it was not improper. The questions concerning Glasser's education were put to test the veracity of certain statements made in Exhibit 209, a personnel record of Glasser, typed by his stenographer from information supplied by Glasser

The Circuit Court of Appeals, with reference to petitioners' criticism of the trial court, said that "We have examined every criticism made, considered them in connection with the entire record and are satisfied that the complaints are of minor importance. They did not affect the substantial rights of the appellants, nor prevent the jury from exercising an impartial judgment on the merits." (R. 1138.) There is consequently no basis for a claim of reversible error. U. S. C., Title 28, Sec. 391.²⁸ See also *Goldstein v. United States*, 63 F. (2d) 609-613 (C. C. A. 8th).

VIII

Petitioners further contend that the prosecuting attorney overstepped the bounds of proper conduct, with the result that they were deprived of their right to a fair and impartial trial. It does not appear, however, that any of their principal grounds of complaint, which are apparently those discussed

and prepared about a month before his resignation from the United States Attorney's office (R. 990-991). Those dealing with the libel case against a Chrysler sedan (R. 1000-1002) were pertinent because that was one of the cases involved in the conspiracy. (See R. 1123.)

²⁸ This statute provides: " * * * On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

in Glasser's petition, pp. 19-24, establish misconduct.²⁹

During Glasser's cross-examination, which inquired into a number of cases handled by him while he was an assistant United States attorney, Government counsel offered in open court to permit him to examine the files of certain cases which the prosecutor had in his possession in the court room. Glasser stated that he would like to take advantage of the offer the following day (Saturday), whereupon the court stated that he might have access to the files over the week-end adjournment (R. 979-980). On Monday Glasser informed the court that he had gone to the United States Attorney's office on Saturday morning and had been refused access to the files. The prosecutor replied that the refusal was occasioned by the fact that Glasser was not accompanied by his attorney (R. 982-983). The court stated that "They simply told you to get your lawyer, and you didn't get your lawyer, so the responsibility is not upon them. Show

²⁹ Kretske cites a number of other instances of alleged improper conduct on the part of the prosecutor. As pointed out in Point VII, *supra*, the propriety of each incident can hardly be determined by reading the selected excerpts which he has taken from the record, without considering their relation to the record as a whole. Some of the incidents were not objected to (R. 289, 636), while in others the objection went merely to the form of the question or was because the ground thereof had already been covered (R. 229, 244, 882). In those instances where objections were overruled, we fail to perceive any error in the trial court's action.

him [Glasser] the reports now," and apparently that was done (R. 983). It seems evident that these facts do not show any unfair refusal to let Glasser inspect pertinent documents.³⁰

Exhibit 96, a transcript of testimony before the grand jury in the case of *United States v. Louis Kaplan et al.*, presented to the grand jury by Glasser as Assistant United States attorney, was received in evidence by the trial court (R. 529) and the part thereof containing testimony of one Cole was read to the jury by the prosecutor (R. 574). Glasser asserts that this portion of the transcript contained certain immaterial testimony by Cole but not his testimony going to the merits of the case presented to the grand jury. He says that the latter testimony was deliberately suppressed by the prosecutor and must have resulted in causing the petit jury to conclude that Glasser made no effort to obtain incriminating evidence from Cole. Since Exhibit 96 is not included in the record and has not been forwarded to this Court by the petitioners, it is impossible, of course, to appraise the nature

³⁰ Glasser intimates (Pet. 21) that the Government was responsible for the loss of two exhibits, Nos. 205 and 206, vital to his cause, which were not transmitted to the Circuit Court of Appeals. However, the Government's additional answer (R. 1100-1101) to the petition in that court to require the United States Attorney to produce certain allegedly missing exhibits (R. 1094-1095) states that Nos. 205 and 206 were defense exhibits which were not then in the United States Attorney's possession and never had been. Hence the fact that they were missing hardly supports a contention that it was the fault of the Government.

of Cole's testimony before the grand jury. But there is much in the record to indicate that Cole did not testify concerning the merits of the case under investigation (R. 531, 590, 606, 925). Certainly the record references cited by Glasser (Pet. 22) do not establish the contrary. In any event, there is nothing to sustain Glasser's assertion that the prosecutor deliberately suppressed part of Cole's testimony.

The objection that the propounding of many leading questions established unfairness on the part of the prosecutor is not well founded. Record references of a number of instances are cited on page 23 of Glasser's petition. In some of them no objection was made on the ground that the witness was being led (R. 289, 296, 301, 636), in one of them an objection was sustained (R. 245), and in the others it is clear that the questioning did not overstep the bounds of propriety.

Viewed as a whole, the record convinces that the petitioners' substantial rights were not affected by any of the incidents to which they allude. The court below said (R. 1137) that none of petitioners' complaints warranted a reversal of their convictions.³¹

The record clearly does not support the assertion that Exhibit 92, to the admission of which petitioners' objection was sustained (R. 712), was nevertheless surreptitiously submitted to the

³¹ Plainly there was no such type of misconduct on the part of the prosecutor in the instant case as was involved in *Berger v. United States*, 295 U. S. 78.

jury by the Government. The assertion rests only upon a recitation in the bill of exceptions that, at the close of petitioners' case, some 35 exhibits, both Government and defense, were received in evidence. These exhibits are listed by number and No. 92 is included (R. 1034). However, the certificate of the Clerk of the trial court as to the exhibits transmitted to the Circuit Court of Appeals does not include or mention Exhibit 92 (R. 1080). We submit that the latter correctly concluded that "From the record thus appearing we are unable to say that [Exhibit 92 was] sent to the jury." (R. 1132.) Moreover, Glasser's petition (p. 24) states that the exhibit was a pre-trial statement of a Government witness, one Raubunas, calculated to corroborate his testimony at the trial. Raubunas testified at length on two occasions (R. 452-527, 713-715), and there is nothing to indicate that the exhibit contained anything beyond what he testified to. In that event, petitioners would hardly have been prejudiced even if the exhibit had reached the jury.

IX

Only two of the petitioners, Glasser and Roth, question the sufficiency of the evidence to have warranted the submission of the question of their guilt to the jury. Glasser's principal contentions are that there is no evidence that he ever received or solicited a bribe, that the prosecution was based entirely on testimony secured and prepared by agents

of the Alcohol Tax Unit, with which Unit he had been at odds, that outside of their testimony the Government's evidence consisted mainly of the testimony of confessed and convicted bootleggers, and that the Government's evidence as to his knowledge and participation in the conspiracy was inadequate (Pet. 4-5; 31-50).

Petitioner Roth, after disagreeing with certain inferences from the evidence made by the Circuit Court of Appeals (Pet. 5-10), contents himself in his argument with the general assertion that the evidence is utterly insufficient and requires a reversal (Pet. 26).

It need only be said that the second count of the indictment upon which petitioners were convicted is not a count for bribery but for a conspiracy to defraud the United States by corruptly influencing the official action of Assistant United States attorneys through the solicitation of payments of moneys from those whose cases would come before such officials. There was consequently no necessity to prove that any bribe was ever received by Glasser although there was ample evidence to confirm the District Court's statement, in sentencing Glasser, that he was satisfied that Glasser accepted money in return for corrupt action (R. 1065).

With respect to the alleged animosity of the Alcohol Tax Unit investigators and the criminal character of many of the Government's witnesses, these considerations merely involve questions of weight and credibility of evidence which,

it is elementary, do not fall within the province of an appellate court. *United States v. Manton, supra*, p. 839. Moreover, it may be pointed out in this connection, that the trial judge permitted the defendants to explore these subjects at great length, so that the jury was fully apprised in reaching their verdict of the interest and character of the witnesses in question. (See R. 932-934, 943-948.)

As to the sufficiency of the evidence to show knowledge of and participation in the conspiracy, the absence of direct evidence is, of course, not controlling. As was said by Mr. Justice Sutherland in the *Manton* case (p. 839):

It is not necessary that the participation of the accused should be shown by direct evidence. The connection may be inferred from such facts and circumstances in evidence as legitimately tend to sustain that inference. Indeed, often if not generally, direct proof of a criminal conspiracy is not available and it will be disclosed only by a development and collocation of circumstances.

In the instant case the Circuit Court of Appeals, after a careful and extensive review of the evidence, followed by a collating of the "noteworthy and expressive circumstances" from which the jury could infer guilty participation of the petitioners in the conspiracy (R. 1129), concluded its discussion of the question by saying that "We have considered this record and are compelled to the conclusion that

the verdict is supported ^{by} substantial evidence'' ³²
(R. 1130).

The conclusion of the Circuit Court of Appeals that there was substantial evidence of petitioners' guilt followed the like conclusion of the District Court and the verdict of the jury. In the light of this unanimity we submit that the petitioners have not made any such showing as would require this Court to reexamine the evidence. Cf. *Delaney v. United States*, 263 U. S. 586, 590.

CONCLUSION

Petitioners had a fair trial, their contentions were carefully considered and correctly decided by the Circuit Court of Appeals, and there is involved no conflict of decisions. We therefore respectfully submit that the petitions for writs of certiorari should be denied.

FRANCIS BIDDLE,
Solicitor General.

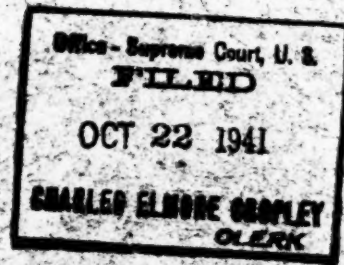
✓ WENDELL BERGE,
Assistant Attorney General.

GEORGE F. KNEIP,
FRED E. STRINE,
HARDY K. MACLAY,
W. MARVIN SMITH,
Attorneys.

MARCH 1941.

³² Since petitioners have not included the trial court's charge to the jury in the record, it must be assumed that that court fully and correctly instructed the jury on the law of conspiracy. See cases cited in footnote 22, *supra*, p. 29.

FILE COPY



Nos. 30, 31, 32

In the Supreme Court of the United States

OCTOBER TERM, 1941

DANIEL D. GLASSER, PETITIONER

v.

UNITED STATES OF AMERICA

NORTON I. KRETSKE, PETITIONER

v.

UNITED STATES OF AMERICA

ALFRED E. ROTH, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below.....	1
Jurisdiction.....	2
Questions presented.....	2
Statute involved.....	3
Statement.....	3
Summary of argument.....	6
Argument:	
I. There is substantial evidence which supports the verdicts against Glasser and Roth.....	11
The Hodorowicz brothers cases.....	13
The cases involving Kaplan and his associates.....	22
Other cases.....	27
Direct evidence of the participation of Roth and Glasser in the conspiracy.....	29
Summary.....	30
II. The record shows that the indictment was returned in open court by the grand jury.....	32
III. The district court properly refused to quash the indictment on the ground of alleged illegal composition of the grand jury.....	38
IV. The indictment is not fatally defective.....	43
A. The second count of the indictment does not charge a conspiracy to violate the bribery statute.....	43
B. The second count is not vague, indefinite, or uncertain, nor does it state improper conclusions.....	47
V. The district court properly overruled petitioners' motion for a new trial based on the alleged exclusion from the petit jury panel of women not members of the League of Women Voters.....	50
VI. Petitioner Glasser was not deprived of effective assistance of counsel.....	56
VII. Exhibits 81A and 113 were properly admitted in evidence.....	63
VIII. The conduct of the trial judge was not such as to deprive petitioners of a fair trial.....	67
IX. Petitioners were not deprived of a fair trial by reason of any prejudicial conduct of the prosecuting attorney.....	81

	Page.
Conclusion.....	97
Appendix.....	98
The evidence relating to the specific cases and incidents.....	98
The Hodorowicz Brothers cases.....	98
The 119th Street still.....	98
The Peter Hodorowicz-Walter Hort case.....	99
The Walter Hort case.....	100
The Zarrattini case.....	101
The Clem Dowiat case.....	102
The 118th Place still.....	102
The Stony Island Avenue still.....	105
The investigation of the Hodorowicz group.....	109
The Kaplan and associates cases.....	117
The Western Avenue and Spring Grove stills.....	117
The Boguch removal case.....	128
The Beisner farm still.....	129
Other cases.....	135
The Kwiatkowski case.....	135
The Abosketes matter.....	137
The Paul Svec incident.....	140
The Vitale cases.....	144
The Wroblewskis matter; the Roth-Campbell incident.....	149

CITATIONS

Cases:

<i>Adler v. United States</i> , 182 Fed. 464.....	68
<i>Agnew v. United States</i> , 165 U. S. 36.....	41, 53
<i>Alford v. United States</i> , 282 U. S. 687.....	79
<i>Armstrong v. United States</i> , 16 F. (2d) 62, certiorari denied, 273 U. S. 766.....	54
<i>Baldwin v. United States</i> , 72 F. (2d) 810, certiorari denied, 295 U. S. 761.....	69
<i>Barkley v. United States</i> , 66 F. (2d) 74.....	61
<i>Blitz v. United States</i> , 153 U. S. 308.....	79
<i>Breese v. United States</i> , 226 U. S. 1.....	37
<i>Breese v. United States</i> , 203 Fed. 824.....	53
<i>Brookman v. United States</i> , 8 F. (2d) 803.....	42, 43, 54
<i>Brown v. United States</i> , 32 F. (2d) 953.....	64
<i>Bu'e v. United States</i> , 76 F. (2d) 848, certiorari denied, 296 U. S. 585, rehearing denied, 296 U. S. 662.....	69
<i>Burnstein v. United States</i> , 55 F. (2d) 599, certiorari denied, 286 U. S. 550.....	69
<i>Callahan v. United States</i> , 35 F. (2d) 633.....	69
<i>Carnahan v. United States</i> , 35 F. (2d) 96, certiorari denied, 281 U. S. 723.....	61
<i>Cartello v. United States</i> , 93 F. (2d) 412.....	55
<i>Cendagorda v. United States</i> , 64 F. (2d) 182.....	61

III

Cases—Continued.

	Page
<i>Commonwealth v. Garletts</i> , 81 Pa. Super. 271.....	43
<i>Cooper v. State</i> , 59 Miss. 267.....	34
<i>Cornelle v. Baltimore & O. R. Co.</i> , 195 Fed. 59.....	36
<i>Crcin v. United States</i> , 162 U. S. 625.....	37
<i>Crawford v. United States</i> , 212 U. S. 183.....	45, 46, 47, 49
<i>Crowley v. United States</i> , 194 U. S. 460.....	41
<i>Cruz v. United States</i> , 106 F. (2d) 828.....	61
<i>Cusmano v. United States</i> , 13 F. (2d) 451, certiorari denied, 273 U. S. 773.....	69
<i>Dealy v. United States</i> , 152 U. S. 539.....	49
<i>District of Columbia v. Clawans</i> , 300 U. S. 617.....	79
<i>Downey v. United States</i> , 91 F. (2d) 223.....	36
<i>Enrique Rivera v. United States</i> , 57 F. (2d) 816.....	49
<i>Fritts v. United States</i> , 80 F. (2d) 644.....	80
<i>Gagnon v. United States</i> , 193 U. S. 451.....	36
<i>Goldstein v. United States</i> , 63 F. (2d) 609.....	85
<i>Goodson, William v. The State of Florida</i> , 29 Fla. 511.....	34
<i>Griffin v. State</i> , 183 Ga. 775.....	43
<i>Haas v. Henkel</i> , 216 U. S. 462.....	45
<i>Hugner v. United States</i> , 285 U. S. 427.....	8, 49
<i>Hall v. United States</i> , 48 F. (2d) 66.....	64
<i>Hammer Schmidt v. United States</i> , 265 U. S. 182.....	45
<i>Hargrove v. United States</i> , 25 F. (2d) 258.....	73
<i>Harrod v. United States</i> , 29 F. (2d) 454.....	64
<i>Heinze v. United States</i> , 181 Fed. 322.....	69
<i>Hitchman Coal and Coke Co. v. Mitchell</i> , 245 U. S. 229.....	61
<i>Houghton v. Jones</i> , 1 Wall. 702.....	79
<i>Houston v. United States</i> , 217 Fed. 852, certiorari denied, 238 U. S. 613.....	49
<i>Hyde v. United States</i> , 225 U. S. 347.....	42, 53, 54
<i>International Harvester Co. v. Carlson</i> , 217 Fed. 736.....	36
<i>Johnson v. Zerbst</i> , 304 U. S. 458.....	60
<i>Johnston v. United States</i> , 154 Fed. 445.....	64
<i>Kanner v. United States</i> , 34 F. (2d) 863.....	64
<i>Kettenbach v. United States</i> , 202 Fed. 377, certiorari denied, 229 U. S. 613.....	74
<i>Lamar v. United States</i> , 241 U. S. 103.....	49
<i>Laska v. United States</i> , 82 F. (2d) 672.....	66
<i>Ledbetter v. United States</i> , 108 Fed. 52.....	7, 33
<i>Logan v. United States</i> , 144 U. S. 263.....	61, 64
<i>McKinney v. State</i> , 3 Wyo. 719.....	43
<i>Mendelson v. United States</i> , 58 F. (2d) 532.....	69
<i>Minner v. United States</i> , 57 F. (2d) 506.....	61
<i>Moffatt v. United States</i> , 232 Fed. 522.....	42
<i>Morrison v. United States</i> , 71 F. (2d) 358, certiorari denied, 293 U. S. 589.....	42

Cases—Continued.

	Page
<i>Morrissey v. United States</i> , 67 F. (2d) 267, certiorari denied, 293 U. S. 566.....	80
<i>Morrow v. United States</i> , 11 F. (2d) 256.....	61
<i>Mose v. The State</i> , 35 Ala. 421.....	34
<i>Neal v. Delaware</i> , 103 U. S. 370.....	52
<i>New York Transportation Co. v. Garside</i> , 157 Fed. 521.....	80
<i>Norris v. Alabama</i> , 294 U. S. 587.....	41
<i>Ogden v. United States</i> , 112 Fed. 523.....	52
<i>Patton v. Texas & Pacific Ry. Co.</i> , 179 U. S. 658.....	78
<i>People v. Blackwell</i> , 27 Cal. 65.....	34
<i>People v. Bopp</i> , 279 Ill. 184.....	60
<i>People v. Clappitt</i> , 362 Ill. 534.....	43
<i>People v. Fudge</i> , 342 Ill. 574.....	43
<i>People v. Linquist</i> , 289 Ill. App. 250.....	43
<i>People v. Mack</i> , 367 Ill. 481.....	43
<i>People v. Mankus</i> , 292 Ill. 435.....	43
<i>People v. Rocco</i> , 209 Cal. 68.....	60
<i>People v. Rose</i> , 384 Ill. 214.....	60
<i>People v. Schraeberg</i> , 347 Ill. 392.....	43
<i>People v. Traeger</i> , 372 Ill. 11.....	39, 40
<i>Philadelphia and Trenton R. Co. v. Simpson</i> , 14 Pet. 448.....	79
<i>Powell v. Alabama</i> , 287 U. S. 45.....	60
<i>Rardin v. Messick</i> , 78 F. (2d) 643.....	36
<i>Rea v. Missouri</i> , 17 Wall. 532.....	79
<i>Rudd v. United States</i> , 173 Fed. 912.....	79
<i>Salen v. State</i> , 231 Wis. 489.....	43
<i>Sanchez v. United States</i> , 108 F. (2d) 735, certiorari denied, 309 U. S. 679.....	56
<i>Shepard v. United States</i> , 290 U. S. 96.....	67
<i>Shinn v. State</i> , 93 Ark. 290.....	34
<i>Shuman v. United States</i> , 16 F. (2d) 457.....	54
<i>Slade v. United States</i> , 85 F. (2d) 786.....	36
<i>Smith v. United States</i> , 106 F. (2d) 726.....	56
<i>Spencer v. Gomez</i> , 114 Fla. 688.....	34
<i>State v. Crilly</i> , 69 Kan. 802.....	34
<i>State v. Grate</i> , 68 Mo. 22.....	34
<i>State v. James</i> , 96 N. J. L. 132.....	43
<i>State v. Luce</i> , 194 Iowa 1306.....	34
<i>Stockslager v. United States</i> , 116 Fed. 590.....	42
<i>Sweeney v. Greenwood Index-Journal Co.</i> , 37 F. Supp. 484.....	36
<i>Thornton v. United States</i> , 271 U. S. 414.....	47
<i>Troutman v. United States</i> , 100 F. (2d) 628.....	69
<i>United States v. Anderson</i> , 101 F. (2d) 325, certiorari denied, 307 U. S. 625.....	61
<i>United States v. Ballard</i> , 35 F. Supp. 105.....	41
<i>United States v. Bishop</i> , 47 F. (2d) 95.....	36, 37

Cases—Continued.

Page

<i>United States v. Breen</i> , 95 F. (2d) 782, certiorari denied, 304 U. S. 585.....	73, 80
<i>United States v. Chares</i> , 40 Fed. 820.....	52
<i>United States v. Cornell</i> , 25 Fed. Cas., No. 14,868 at 556....	42
<i>United States v. Dressler</i> , 112 F. (2d) 972.....	56
<i>United States v. Gale</i> , 109 U. S. 65.....	41
<i>United States v. Gilbert</i> , 31 F. Supp. 195.....	43
<i>United States v. Gross</i> , 103 F. (2d) 11.....	72
<i>United States v. Hartenfeld</i> , 113 F. (2d) 359, certiorari de- nied, 311 U. S. 647.....	56
<i>United States v. Holt</i> , 108 F. (2d) 365, certiorari denied, 309 U. S. 672.....	45, 46, 56
<i>United States v. Kay</i> , 101 F. (2d) 270, certiorari denied, 306 U. S. 660.....	75
<i>United States v. Manton</i> , 107 F. (2d) 834, certiorari denied, 309 U. S. 664.....	8, 12, 43, 45, 46, 61, 87
<i>United States v. McClure</i> , 4 F. Supp. 668.....	55
<i>United States v. Milner</i> , 36 Fed. 890.....	45, 46
<i>United States v. Orr</i> , 223 Fed. 220.....	45, 46
<i>United States v. Parker</i> , 103 F. (2d) 857, certiorari denied, 307 U. S. 642.....	41, 54
<i>United States v. Shannabarger</i> , 19 F. Supp. 975, reversed on other grounds, 99 F. (2d) 957.....	55
<i>United States v. Stoller</i> , 180 Fed. 910.....	36
<i>United States v. Warren</i> , 120 F. (2d) 211.....	70
<i>Walker v. United States</i> , 93 F. (2d) 383, certiorari denied, 303 U. S. 644.....	41, 53, 55
<i>Westcott v. State</i> , 31 Fla. 458.....	34
<i>Williams v. United States</i> , 20 F. (2d) 269.....	64
<i>Williams v. United States</i> , 93 F. (2d) 685.....	68, 69
<i>Williamson v. United States</i> , 207 U. S. 425.....	8, 47, 48
<i>Wills v. Russel</i> , 100 U. S. 621.....	79
<i>Wilson v. United States</i> , 104 F. (2d) 81, 82, 308 U. S. 574....	55
<i>Wight, Petitioner, In re</i> , 134 U. S. 136.....	36
<i>Wuichet v. United States</i> , 8 F. (2d) 561.....	41, 53, 54
<i>Zavate v. United States</i> , 41 F. (2d) 598, certiorari denied, 282 U. S. 867.....	61

Statutes:

Criminal Code, Section 37 (U. S. C., Title 18, Sec. 88).....	3
United States Code, Title 18:	
Section 88.....	44, 45
Section 91.....	46
Section 556.....	7, 37
United States Code, Title 28:	
Section 411.....	39
Section 412.....	50, 54

Statutes—Continued.

	Page
Illinois Revised Statutes, 1939:	
Chapter 78, Section 1.....	38, 39
Section 2.....	38
Section 25.....	38
Illinois Constitution, Article IV, Section 12.....	39
Miscellaneous:	
American Bar Association Journal, April 1940, Vol. 26,	
No. 4: "Woman and the Law".....	53
Wharton, Criminal Evidence (11th ed.), secs. 699,720.....	61
Wigmore, Evidence:	
(3d ed.) section 1077.....	61
(3d ed.) section 2551.....	68
(3d ed.) section 770.....	82
(3d ed.) section 784.....	68, 74, 80

In the Supreme Court of the United States

OCTOBER TERM, 1941.

Nos. 30, 31, 32

DANIEL D. GLASSER, PETITIONER

v.

UNITED STATES OF AMERICA

NORTON I. KRETSKE, PETITIONER

v.

UNITED STATES OF AMERICA

ALFRED E. ROTH, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals
(R. 1117-1139) is reported in 116 F. (2d) 690.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 13, 1940 (R. 1139-1140), and petitions for rehearing (R. 1141-1208) were denied January 23, 1941 (R. 1239). The petitions for writs of certiorari were filed February 28, 1941, and were granted April 7, 1941 (R. 1245). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the convictions of petitioners Glasser and Roth.
2. Whether the record fails to disclose that the indictment was returned in open court by the grand jury.
3. Whether the trial court erred in overruling petitioners' motion to quash the indictment on the ground that the grand jury was illegally constituted because of the exclusion of women therefrom.
4. Whether the second count of the indictment sufficiently charged a conspiracy to defraud the United States.
5. Whether the trial court abused its discretion in denying petitioners' motion for a new trial

based on the alleged improper method of selecting prospective petit jurors.

6. Whether petitioner Glasser was deprived of his right to the effective assistance of counsel.

7. Whether Government Exhibits 81A and 113 were properly admitted in evidence.

8. Whether the conduct of the trial judge was such as to deprive petitioners of their right to a fair and impartial trial.

9. Whether the prosecutor was guilty of prejudicial misconduct.

STATUTE INVOLVED

Section 37 of the Criminal Code (U. S. C., Title 18, Sec. 88) reads:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

STATEMENT

On September 29, 1939, an indictment in two counts was returned against petitioners and two others¹ in the district court for the northern district of Illinois (R. 2-38). The first count is not

¹ The two co-defendants, Anthony Horton and Louis Kaplan, were convicted (R. 101, 1045), but did not appeal.

here involved since it was dismissed at the close of the Government's case upon its election to proceed on the second count (R. 100). The second count (R. 22-37), after alleging that during certain periods the defendants Glasser and Kretske were assistant United States attorneys for the northern district of Illinois, employed to prosecute in that district all delinquents for crimes and offenses cognizable under the authority of the United States, particularly violations of the federal internal revenue laws relating to liquor, charged in substance that the defendants conspired to defraud the United States of its governmental function to be honestly, faithfully, and dutifully represented in such matters in the courts of the United States by an assistant United States attorney free from corruption, improper influence, dishonesty, or fraud. The count alleged broadly that the conspiracy was to be accomplished by the soliciting of moneys from certain persons charged with violating or about to be charged with violating the federal liquor laws, which moneys were to be used to influence and corrupt the defendants Glasser and Kretske and the defendant Glasser alone in the performance of their and his official duties.

Petitioner Glasser was the assistant United States attorney in charge of liquor cases (R. 188, 914, 917) in the office of the United States Attorney for the northern district of Illinois from shortly after March 1935 (R. 186, 911) until April

1939 (R. 912). Petitioner Kretske was also an assistant United States attorney in that office from October 1934 (R. 186-187, 802) until April 1937 (R. 187, 801) and assisted Glasser in the prosecution of liquor cases (R. 188, 190, 801). After his resignation from office, Kretske practiced law in Chicago (R. 753, 803). Petitioner Roth was an attorney in private practice (R. 833) to whom Kretske referred various persons who were charged with violations of the liquor laws and whose cases were involved in the instant conspiracy (R. 835, 861, 872, 875, 878). The defendant Horton was a bondsman who conducted his business in the Federal Building in Chicago where the office of the United States Attorney is located (R. 750, 765-766). The defendant Kaplan was engaged generally in the illicit alcohol business in and around Chicago and was a large scale operator of illicit stills in that vicinity (R. 452, 453, 460, 463, 467-468, 473, 530).

The other relevant facts relating to the questions in issue are set out in full in the pertinent portions of the Argument.

Petitioners were convicted (R. 101, 1045) and were sentenced as follows: Glasser and Kretske to imprisonment for a period of 14 months and Roth to pay a fine of \$500 (R. 104). On appeal to the Circuit Court of Appeals for the Seventh Circuit the petitioners' convictions were affirmed (R. 1117-1140).

SUMMARY OF ARGUMENT

I. While it is not our contention that the evidence precluded a verdict of innocence, or that it compelled a conviction, the evidence, which is summarized in the Argument and detailed at greater length in the appendix, is sufficient to support the convictions of petitioners Glasser and Roth. The questions concerning the guilt of petitioners Glasser and Roth depend upon a development and collocation of circumstances tending to sustain the inferences necessary to support the verdict. No single case or incident points inevitably to the guilt at least of Glasser, but there is substantial evidence to show that violators of the alcohol tax laws conferred with the defendant Horton or the petitioner Kretske concerning the possibilities of a favorable disposition of the pending case. The evidence further shows that money was paid to Kretske to fix the case and that Kretske, in accepting the money, stated that it was to go to Glasser. Thereafter, except where payment had been refused, or where it was apparent that Glasser found it impossible to act, the case on behalf of the Government was not pressed by Glasser. In addition, there was direct evidence of the participation of Roth and Glasser in the conspiracy. The issue of the guilt of Glasser and Roth is largely an issue of credibility and was therefore peculiarly within the province and competence of the jury. There was sufficient

evidence to permit the jury to resolve the issue and to justify the jury's conclusion.

II. The record shows that the indictment was returned in open court by the grand jury. The endorsement on the face of the indictment, "Filed in open court this 29th day of Sept., A. D. 1939, Hoyt King, Clerk," preceded by the notation, "A true bill, George A. Hancock, Foreman," is a sufficient record showing. *Ledbetter v. United States*, 108 Fed. 52, 55. In addition, however, there is also a notation of record that "The Grand Jury return 4 Indictments in open Court." Even if, as petitioners urge, this notation should be considered invalid as a *nunc pro tunc* order, such invalidity is immaterial as involving merely a matter of form which petitioners do not contend prejudiced them. U. S. C., Title 18, Section 556. Nor is it contended that the indictment was not in fact returned in open court by the grand jury.

III. There was no impropriety in excluding women from the grand jury list because it was not shown that women had at that time been placed on the state jury lists pursuant to the recently enacted Illinois statutes. Further, petitioners have not shown that they were prejudiced in any way or that any of the grand jurors were incompetent or disqualified.

IV. Count two of the indictment is not fatally defective as alleging a conspiracy to commit the substantive offense of bribery or as being vague,

indefinite, or uncertain. The count clearly charges a conspiracy to defraud the United States, the scheme of resorting to bribery being averred only as a means of consummating the conspiracy to defraud. *United States v. Manton*, 107 F. (2d) 834 (C. C. A. 2), certiorari denied, 309 U. S. 664. It is sufficient that the object of the conspiracy is alleged with "certainty to a common intent"; the failure to allege the details of each transaction executed by the defendants in furtherance of that object does not open the count to attack on demurrer, for the conspiracy is the gist of the charge and it may be assumed that the particulars of each such transaction, such as times, persons, causes, proceedings, circumstances, questions, and the like, were not determined at the time of the conspiracy. *Williamson v. United States*, 207 U. S. 425. These details were furnished petitioners in a bill of particulars, but the fact that the count could be made more certain by such a motion has no bearing on the sufficiency of the count on demurrer. *Hagner v. United States*, 285 U. S. 427, 431.

V. Petitioners have not shown abuse of discretion by the trial court in overruling their motion for a new trial based on the ground of improper selection of the petit jury. Not only is there no evidence that women, who were not members of the League of Women Voters, were excluded or that any women on the panel attended classes where

views of the prosecutor were presented, but the Bar Association Journal article upon which petitioners' affidavits rely negates their contentions. Petitioners' claim that the court clerk and jury commissioner improperly delegated their authority to select jurors is not substantiated. Moreover, even if there were a technical irregularity in selecting the prospective female jurors, petitioners have no standing to complain, since there is no showing of prejudice.

VI. Petitioner Glasser was not deprived by the trial court of his right to the effective assistance of counsel. The court offered the suggestion that Glasser's attorney accept an appointment to represent petitioner Kretske also, but Glasser objected and the suggestion was abandoned. Thereafter, at the request of Kretske, and with the express consent of the attorney and, at least, the tacit consent of Glasser, the court made the appointment. Nor was Glasser prejudiced by the fact that his attorney also represented Kretske. The attorney actively defended Glasser's interests throughout and, in fact, took the leading defense role at the trial.

VII. Exhibits 81A and 113, reports of the Alcohol Tax Unit in two of the cases in which the Government alleged that the official decisions of Glasser were influenced pursuant to the conspiracy charged in the indictment, were admitted only against petitioner Glasser and with the consent and agreement

of his counsel. Moreover, since they showed what evidence of violations of the alcohol tax laws was furnished to Glasser, they were directly relevant evidence.

VIII. There was no impropriety in the conduct of the trial judge. The incidents cited by petitioners do not support their claim of misconduct. The record shows that the actions of the court complained of were properly designed to elicit the truth and a full disclosure of material facts.

IX. Petitioners' contentions that the prosecuting attorney denied petitioner Glasser access to documents introduced in evidence, surreptitiously submitted to the jury pre-trial statements of Government witnesses, read to the jury only part of a witness's testimony before a grand jury, asked witnesses specious questions based upon unproved facts, and, after trial, lost certain defense exhibits, are not supported by the record. Though one of the prosecutors, after trial, entered official notations on a file envelope which had been introduced, these notations clearly did not prejudice Glasser's appeal. In respect of the claim that the prosecutor, by leading questions, assumed the role of a witness, the record shows that in many of the instances cited no objections were made and that in the others the questions were properly permitted.

ARGUMENT

I

THERE IS SUBSTANTIAL EVIDENCE WHICH SUPPORTS
THE VERDICTS AGAINST GLASSER AND ROTH

Petitioners Glasser (Br. 72-78) and Roth (Br. 50-56) urge that the evidence was insufficient to support the verdict. Petitioner Kretske concedes (Pet. 3, Br. 3-4, 8-11) the existence of sufficient evidence against him.

Some preliminary observations are necessary in order that this branch of the case be placed in its proper setting. The gist of the evidence by which the Government, at the trial, sought to prove the guilt of petitioners, falls into two categories: (1) the circumstantial evidence relating to specific cases, in Glasser's charge, which were disposed of adversely to the Government; and (2) direct evidence of the improper actions of defendants Glasser, Kretske, Roth, Horton, and Kaplan. Together, the evidence in these two categories presents a pattern which shows these steps: (1) apprehension of violators and investigation of the specific cases by the Alcohol Tax Unit; (2) presentation of the material uncovered by the Unit to Glasser; (3) concurrent action by Kaplan or Kretske, directly, or through Horton, to solicit money from the prospective defendants upon the promise that the case would be settled satisfactorily to such prospective defendants,¹ such settle-

¹ It was at this point that Roth played his role: Kretske often referred the prospective defendants to Roth.

ment to be obtained by transmission of the money to Glasser; and (4) the disposition of the case, handled by Glasser, in the manner promised by Kretske, Kaplan, and Horton.

It is not our contention that the evidence precluded a verdict of innocence, or that it compelled a conviction. The case, we concede, depends in large part, at least in respect of Glasser, upon a development and collocation of circumstances tending to sustain the inferences necessary to support the verdict. It depends, too, in a considerable measure, upon the testimony of convicted bootleggers, of co-conspirators, of persons of dubious character.² But indeed, in a case such as this, it could scarcely be otherwise. Cf. *United States v. Manton*, 107 F. (2d) 834, 843 (C. C. A. 2), certiorari denied, 309 U. S. 664.

The instant issue also depends upon evidence relating to a number of cases handled by Glasser, and these specific cases carry with them varying degrees of persuasiveness. For some, there appears, indeed, to be satisfactory explanation;³ for some, convincing explanation is wholly lacking. Petitioners Roth (Br. 50-56) and Glasser (Br. 72-78) have pitched their contentions relating to the sufficiency of the evidence upon only a few

² There is also evidence of friction, during the period in question, between the Alcohol Tax Unit, some of whose investigators testified for the Government in the instant case, and Glasser (R. 583-585, 897-899, 905, 932-933, 948).

³ The 118th Place still case, *infra*, pp. 16-17, seems to fall within this category.

isolated and specific cases involved in the conspiracy alleged. The resulting impression is distorted. We believe that a different impression is to be gained by examination of all the specific cases.

Justice both to the defendants and to the Government requires an extensive recitation of the evidence. We regret setting out at such length the relevant material. But we urge the necessity of doing so in order that the proper picture may be delineated accurately. In the appendix, *infra*, pp. 98-152, therefore, we shall include a narrative of the many cases and incidents involved. In this portion of the brief we shall summarize these cases and incidents. We submit that, observing the stricture that issues of the weight of the evidence and the credibility of the witnesses are within the exclusive province of the jury, the conclusion is justified that, upon the whole record, the verdict of the jury is supported by substantial evidence.

The Hodorowicz brothers cases.—The Hodorowicz brothers, Frank, Peter, Mike, and Anthony, together with Elmer Swanson, Christ Del Rocco, and others, comprised a notorious group of bootleggers operating in Chicago (R. 390, 735, 799, 891, 907). Frank Hodorowicz was the manager and financial agent of this group (R. 255-256, 260, 271, 296-298, 304-305, 307-308); his hardware store was its headquarters (R. 228-229, 244, 296, 298, 357-358).

The activities of the Hodorowicz group gave rise to the following cases involved in the present case: The 119th Street still, the Peter Hodorowicz-Walter Hort case, the Walter Hort case, the Zarrattini case, the Clem Dowiat case, the 118th Place still, the Stony Island Avenue still, and the general investigation of the Hodorowicz group. The circumstances of each of these cases are set out in the appendix.

In brief, the evidence relating to these cases shows that members of the Hodorowicz crowd were apprehended by investigators of the Alcohol Tax Unit in circumstances clearly indicating violations of the law. (R. 249, 254-255, 267-268, 277-278, 281, 282, 305, 355-356, 357-361, 384-385, 386, 387-389, 706.)⁴ Immediately upon being apprehended the members of the group, directly or through other members, got in touch with Horton, a defendant below, Kretske,⁵ or, in two cases, Miller, a

⁴ Thus, for example, Peter Hodorowicz and Walter Hort were arrested after selling illicit alcohol to an Alcohol Tax Unit investigator (R. 254-255, 265-266, 357-361). Walter Hort was arrested while driving a car containing illicit alcohol (R. 267-268). Albina Zarrattini was apprehended with illicit alcohol in her possession (R. 304-305). Clem Dowiat was arrested while hauling illicit alcohol (R. 355-366).

⁵ In one case, involving the Stony Island Avenue still, Kretske, after offering to "take care" of the case for \$1,200, referred the members of the group to Roth (R. 229-230, 244, 272-273, 297-298, 344-345).

bootlegger.* There followed negotiations between those apprehended, or persons in the Hodorowicz group acting in their behalf, and Kretske and Horton. In the 119th Street still case, Horton offered to "take care" of the matter for \$500, which he said he would give to "Red", meaning Glasser. Del Rocco paid Horton the money. (R. 225-226, 230, 242-243.) In the Peter Hodorowicz-Hort case, Frank Hodorowicz paid Miller \$800 to have the case against Hort and Peter "dragged along," and later Frank paid Miller \$500 to "take care" of a second case involving Hort (R. 307-309). After the seizure of the 118th Place still, Frank Hodorowicz paid Kretske \$800 upon the latter's assurance that he could take care of the matter for that sum. Kretske told Frank that the money would be delivered to "Red" (R. 296-297). When the Stony Island Avenue still was seized, Frank, Mike, and Anthony Hodorowicz, Swanson, Del Rocco, Horton, and Kretske met at the hardware store. Kretske explained that there was "a lot of heat" on the case but that he would take care of it for \$1,200. An initial payment of \$500 was made to Kretske, who stated that Glasser would receive a part of the money and nobody "would go to jail" (R. 227, 229-231, 244-245, 297-298, 300).

* In the Clem Dowiat case, there was no evidence of such an arrangement. See appendix, *infra*, p. 102.

In each of these cases, Glasser represented the Government and each was disposed of favorably to the member or members of the Hodorowicz crowd involved: In the case of the 119th Street still, operated by Swanson and Del Rocco, only Joppek, the still's attendant (R. 228, 247), was arrested, but he was released by Glasser and none of the three was prosecuted (R. 226, 228, 243-244, 249-250).⁷ In the Peter Hodorowicz-Hort case, the matter was "dragged along" in accordance with Miller's promise, and after a true bill was voted by the grand jury, Glasser withdrew it and never represented it (R. 254-258, 265-267, 309, 365, 705; see also R. 704).⁸ In the Walter Hort case, Hort was discharged after appearing before the Commissioner (R. 267-268, 287, 309-310).⁹ In the case involving the 118th Place still, the Hodorowicz members were dismissed when a motion to suppress the evidence was granted by the Commis-

⁷ Glasser explained his action on the ground that it was not his practice to prosecute the minor figures, but rather, he wanted to ascertain through them the identity of the still's owners (R. 932, 964-965). But he did not question Joppek, but simply released him with instructions to return a week later (R. 249-250). The record shows no effort by Glasser to determine through Joppek who owned the 119th Street still.

⁸ Glasser justified the withdrawal of this case on the ground that investigator Smallwood wished to use it as part of a larger case against the Hodorowicz crowd (R. 948-949). Smallwood had died before the present trial (R. 958).

⁹ Kretske, then still an assistant United States attorney, represented the Government in this proceeding (R. 268, 287).

sioner (R. 258-261, 270-271, 285-286, 296-297).¹⁰ In respect of the Stony Island Avenue still, Anthony Hodorowicz, Swanson, and Dowiat were indicted, but the case was subsequently stricken from the call with leave to reinstate. The three were never thereafter tried on this indictment, and none of the others involved in the still was indicted (R. 230-232, 272-273, 274, 275-276, 342-346; Ex. 226, R. 1034).¹¹

Late in 1937, the Alcohol Tax Unit's investigators worked to develop a case against the entire Hodorowicz group (R. 384-385, 387-391, 705-706, 706-708). Evidence was gathered, and Glasser frequently conferred with Bailey, an investigator, on the progress of the case (R. 706-708). In April 1938, Bailey submitted his final report to Glasser, naming all of the Hodorowicz crowd as

¹⁰ The evidence relating to the disposition of this case seems rather clearly to indicate that the dismissal itself had an innocent explanation: The defendants were arrested when agents of the Alcohol Tax Unit raided a still in premises for which they had no search warrant (R. 277-279). But the evidence also justifies the inference that Glasser advised the defendants in that case to "claim ownership of the still" at the Commissioner's hearing to support their petition to suppress the evidence, which had previously been filed by their attorney (R. 260, 262, 296-297, 317-318; see appendix, *infra*, pp. 102-105).

¹¹ Glasser explained that this case was stricken at the request of investigator in charge Ritter, who wanted to secure more evidence (R. 918-920). Ritter, though available, did not testify (R. 920-921).

prospective defendants and including much evidence of conspiracy as well as of substantive offenses (R. 708; Exs. 160, 163, R. 712). Glasser told Bailey he would present the case to the jury the following month (R. 708).

In May, according to the testimony of Frank Hodorowicz, Kretske told Frank that Frank was "in a jam" but could avoid an indictment by paying Kretske \$1,000. Hodorowicz refused (R. 300; see also R. 262). Early in June, Glasser presented to the grand jury two cases involving the illicit sale of alcohol set out in Bailey's report, and indictments were returned against three of the Hodorowiczes and Dowiat (R. 708-709). Despite Glasser's assurances to Bailey, Glasser did not present the conspiracy case (R. 708).

Upon the return of the indictments, Frank Hodorowicz consulted Kretske, and paid \$250 for Kretske to "take care of it" (R. 300-301, 311). Subsequently Kretske told Frank that "they got Glasser over a barrel, he can't do anything," that there was "too much heat," and the case could not be fixed (R. 300-301). Frank then went to Roth, and the latter with Kretske examined "the papers" in Glasser's office (R. 302, 333). Frank Hodorowicz testified that he then called on Glasser to complain that he was getting a "raw deal." Glasser replied that he was helpless, that Frank would have to go to jail, and that Bailey threatened to take Glasser's job unless Glasser secured a conviction

(R. 302). Later, Glasser recommended Hess, an attorney, to Frank as one who could do Frank "a lot of good" (R. 302-303).¹²

Meanwhile, although he repeated his promises to Bailey to present the conspiracy case, Glasser never presented it (R. 709, 710). The Hodorowicz-Dowiat cases were successively continued at Glasser's request, but in February they were brought to trial (R. 710). The Hodorowicz and Dowiat were convicted, and, although at the time of sentence Glasser was silent on their history and on their counsel's request for probation, Frank was sentenced to imprisonment for a year and a day, and Mike and Peter Hodorowicz and Dowiat for nine months (R. 711). That same day Glasser was relieved of the alcohol tax call (R. 705).

Glasser admitted that it was "probably true" that Bailey's report contained evidence of other substantive offenses committed by the Hodorowicz group, upon which no action was taken (R. 1007). He offered no further explanation for his failure to present them.

We believe that the evidence relating to the Hodorowicz crowd, here briefly summarized, supported the jury's verdict. There was before the jury testimony that in most of these cases, money was paid to stay prosecutive action, and that Hor-

¹² On arraignment, Roth had represented Frank (R. 302, 709).

ton and Kretske, who received some of the payments, stated that the money was to go to "Red", a term which it is undisputed, refers to petitioner Glasser (R. 230, 297, 306, 510, 547). There was also evidence that until February 1938, when the indictment in the Stony Island Avenue case was returned (Ex. 226, R. 1034), no prosecutive action was taken against any of the members of the Hodorowicz gang. Three witnesses testified that \$500 was paid to Kretske to fix that case, with a balance of \$700 to be paid later (R. 229, 244, 298). The defendants were not prosecuted upon the indictment. The jury could quite properly have concluded, therefore, that the results in these cases were obtained by the payment of money to Glasser. The final result was that, although the Alcohol Tax Unit investigators submitted a great mass of evidence implicating the key figures in the Hodorowicz gang and many minor figures in several violations, the only convictions obtained were those of Frank, Peter, and Mike Hodorowicz and Dowiat in the two cases. Del Rocco and many lesser figures were not even indicted and Anthony Hodorowicz and Swanson, though indicted, were not prosecuted. In respect of the two cases in which convictions were obtained, there was evidence that Frank Hodorowicz refused to pay Kretske \$1,000 to prevent an indictment and that one month after such refusal the indictments were returned, though in previous cases, where money

was paid, no prosecutive action was taken. There was in addition evidence that the Alcohol Tax Unit conducted an extensive investigation of the Hodorowicz group, that Bailey was in constant touch with the case after his report was submitted to Glasser and pressed Glasser for action, and that Glasser, on the occasions when Frank Hodorowicz visited him at his office, displayed, at the very least, an undesirable familiarity with a notorious bootlegger. The jury could justifiably infer from this evidence that prosecution even on these charges was delayed and impeded as long as Glasser thought it safe to do so.

With reference to the part played by Roth in these cases, the evidence indicated that the Hodorowicz crowd was referred to him by Kretske, that he was closely associated with Kretske and also talked to Glasser about the cases, and that after it became clear to Frank Hodorowicz that he and his co-defendants would have to stand trial on the June 1938 indictments, Hodorowicz retained other counsel. Frank Hodorowicz testified that this was done upon Roth's suggestion after Roth had seen Glasser (R. 333). This evidence is particularly significant in the light of Roth's efforts at the trial below to show that he was an expert in handling cases in the federal courts (R. 796, 749-750, 782, 783, 833-834, 882, 889, 890). The jury could properly have concluded

from this evidence that Roth's role in the conspiracy was to represent the accused in order to give the appearance of arm's-length dealing with Glasser.

The cases involving Kaplan and his associates.—Much the same pattern is presented by the cases involving Kaplan, a defendant below, and his associates.

Kaplan was engaged in the illicit alcohol business in and around Chicago (R. 452-453, 460, 530, 537-538); he was reputed to be a leading bootlegger (R. 530). His associates included Raubunas, Dewes, Slesur, Widzes, Cole, Pregenzer, Boguch, Rankin, Fernandez, and Simms (R. 452-454, 460, 462-463, 537-538). The activities of Kaplan and these men gave rise to the following cases, among others, concerning which evidence was adduced at the trial below: The Western Avenue and the Spring Grove stills, the Boguch removal case, and the Beisner farm still. The circumstances of each of these cases are set out in the appendix, *infra*, pp. 117-135).

Briefly, the evidence relating to Kaplan and his associates is as follows:

After the raid on the Western Avenue still, in which Kaplan, Raubunas and Widzes were partners (R. 366, 452-454), Kaplan told Raubunas and Widzes that the case could be "squashed" "in the

federal building" for \$500.¹³ Raubunas paid the sum to Kaplan. (R. 458-459.) Raubunas was later brought to Glasser's office, but Glasser released him (R. 463-464). Thereafter, Kaplan, Raubunas, Dewes, and Slesur set up a new still at Spring Grove (R. 367-368, 460-463, 537-538, 569-570, 582, 620, 623, 626), which was raided in January 1937. Boguch and Rankin, two persons working for Kaplan, were arrested on the premises (R. 367, 465, 529, 538, 620). They were released on bonds furnished by Horton, who sent them to Kaplan. Kaplan assured Boguch and Rankin that "everything will be taken care of, that they would postpone the case until it got dusty, and would forget about it, drop it". (R. 368-369, 620.) Kaplan told Raubunas they were in trouble and asked for \$500 so that the case might be "taken care of" in the Federal Building. Raubunas paid (R. 465-466).

Thereafter, the Alcohol Tax Unit submitted reports to Glasser concerning these two stills, and implicating Kaplan, Raubunas, Dewes, Slesur, Widzes, Cole, Pregenzer, Rankin, Boguch, and

¹³ Raubunas testified that before assuming an interest in the still, Kaplan assured him that the still was "protected" by Kaplan's payment of \$400 to "big people" in the Federal Building (R. 453-454). Raubunas identified the "big people" as Glasser and Kretske (R. 453-454, 456, 457-458, 462, 464, 470, 475). But it should be pointed out that Raubunas' account of these "protection" payments does not appear to be particularly persuasive because of their probable lack of inherent credibility.

others (R. 444-445, 451-452, 529-530, 539-540; Ex. 81A, R. 529; Ex. 113, R. 532). Glasser presented the Spring Grove case to the grand jury in August 1937 (R. 528, 530-531) but withdrew it (R. 528, 531). In October 1937, he presented both the Spring Grove and Western Avenue cases to the grand jury (R. 528, 531). The former, however, was again withdrawn by Glasser (*ibid.*), and in respect of the Western Avenue case, Kaplan, Raubunas, Widzes, and Boguch, all key figures, were no-billed (R. 528).¹⁴ Two days before Glasser presented the Spring Grove case to the grand jury for the third time in May 1938 (R. 528-529), Horton told Dewes that Kretske wanted to see him.¹⁵ Dewes called on Kretske, who told Dewes that Dewes should pay him \$100, Kretske would send the money to Glasser, and Dewes would be "no-billed" by the grand jury. (R. 542-543.) Finally, after Glasser advised the grand jury concerning whom it should indict (R. 589), a true bill was returned against Slesur, Cole, Pregoner, Rankin, and Boguch,¹⁶ and a no-bill was returned as to Kaplan, Dewes, and Rau-

¹⁴ Glasser testified that he presented to the grand jury all available evidence (R. 918), and that he concurred in the no-bill (R. 970).

¹⁵ Kretske had resigned as assistant United States attorney (R. 187, 801).

¹⁶ Subsequently, Kretske warned Dewes not to discuss the circumstances under which Dewes was no-billed (R. 544). The men named in the indictment were not brought to trial while Glasser was in office (Ex. 177, R. 1034; see also 380, 583, 621).

bunas (R. 528-529), three of the four partners in the still. Not until Glasser's successor represented the Spring Grove case were these three indicted (Ex. 130; see also R. 489, 517-518, 550, 713-714).¹⁷

Other cases involving members of the Kaplan group presented a similar sequence of events. After Boguch was arrested for removal to Montana (R. 290-291, 369-370), he paid Kaplan \$250 to "take care" of the case (R. 369-370, 376-377), and subsequently the proceeding was dismissed by the Commissioner on the Government's motion (R. 290-291, 370-371). In November 1937, the Beisner farm still was raided; Farber, Widzes, Beisner, and Neiss were arrested (R. 468-469, 540-541, 689-690). Raubunas Dewes, and Farber first negotiated with Horton to "fix" the case but since they thought his price was too high (R. 469-470, 541-542, 548), Farber took Raubunas and Dewes to Kretske's office. The latter agreed to "take care" of the case for \$1,200. (R. 470, 542, 548.) After Raubunas paid Kretske \$300 as his share (R. 470, 542, 548), Kretske assured Raubunas that it would not be necessary for the defendants to have a lawyer at the Commissioner's preliminary hearing because "Red" would be there (R. 471). In November 1938 Raubunas, Dewes, and Beisner were

¹⁷ Glasser explained the disposition of the Spring Grove case on the ground that Cole, a key witness, was unreliable, and that the first withdrawal was at the request of the Alcohol Tax Unit investigator (R. 923-925).

indicted and Farber, Widzes, and Neiss were nobilled (R. 290, 697-698; Ex. 169, R. 712, 1034). Dewes thereafter paid Kretske \$275 to "fix" his case with Glasser (R. 543-545, 547). No further action was taken against the Beisner farm participants until Glasser's successor re-presented the case and secured an indictment against Raubunas, Dewes, Beisner, Farber, Widzes, Neiss, and one Duthorn (Exs. 168, 169, R. 712, 1034).

Thus, of this large group of bootleggers, various combinations of whom were involved in these and other cases (R. 689, 690, 698, 699, 700 [Ex. 157, R. 698; Ex. 195]; R. 623-624, 629, 630, 631, 632 [Exs. 172, 178, R. 712, 1034]; R. 620-621, 623, 625 [Ex. 179, R. 1034]), none was brought to trial and convicted during Glasser's tenure in office. Farber, who Kretske admitted he had known for "maybe ten years" (R. 810), pleaded guilty in one case and, with Glasser appearing for the Government, was placed on probation (R. 689, 690, 699; Exs. 157, 195, R. 698). Glasser, it seems (compare R. 630 with R. 826-827), appeared for the Government on March 31, 1939, when Slesur entered guilty pleas on three indictments pending against him (including the June 1938 Spring Grove indictment), but Glasser's successor appeared when Slesur was later sentenced to the penitentiary (R. 630, 827; Exs. 172, 177, 178, 179, R. 712, 1034). Kaplan, the principal figure in the Western Avenue and Spring Grove cases, and Widzes, who was involved in the Western Avenue

and Beisner farm stills, were not even indicted. And Raubunas and Dewes, though indicted in the Beisner farm case, and many minor figures who were indicted in the Spring Grove and Beisner farm cases, were not brought to trial.

Other cases.—Other cases involved in the instant trial were the Kwiatkowski case, the Abosketes matter, the Vitale cases, and the Wroblewski brothers cases (see appendix, *infra*, pp. 135–152).

After Kwiatkowski was apprehended while leaving premises in which a still was later discovered and with illicit alcohol in his possession (R. 393, 395–396), he paid Horton \$600 to fix the case (R. 413).¹⁸ Kwiatkowski was thereafter discharged by the Commissioner for lack of probable cause (R. 288–289, 413–414). Although Ritter, an Alcohol Tax Unit investigator, subsequently transmitted a supplemental report setting out additional evidence and requesting reconsideration (R. 585–586; Ex. 230, R. 1034), Glasser took no further action against Kwiatkowski (R. 961–963).¹⁹

¹⁸ The statement in Glasser's brief (p. 77) that Kwiatkowski testified on cross-examination (R. 415) that he did not pay \$600 to Horton to fix his case should be compared with Kwiatkowski's testimony on direct (R. 413) and the entire cross-examination of Kwiatkowski (R. 414–432), and especially his statements at pages 419–420.

¹⁹ Glasser's successor secured an indictment against Kwiatkowski (R. 430). Glasser testified that he could not recall receiving the supplemental report (R. 961–963).

Abosketes was suspected of being a leading figure behind a certain still (R. 647). One Brown and others, who had previously been convicted in connection with the violation, were questioned by Glasser and an investigator concerning Abosketes' connection with the still (R. 647-649). Simultaneously, Brantman, an accountant (R. 650), got in touch with Abosketes, told him he was going to be indicted in the northern district of Illinois, and offered to fix the case with somebody in the Federal Building for \$5,000 (R. 663-664, 665, 668, 669-670, 672). Abosketes paid Brantman \$3,000 for "services rendered" (R. 651, 666, 670; Ex. 134, R. 651), and Brantman transmitted the money to Kretske (R. 652). Abosketes was not indicted in that district (R. 663, 666).

In the Vitale cases, Leo Vitale, owner and operator of a still which had been raided, was arrested (R. 441, 442; Ex. 210, report dated September 2, 1936), arraigned, and pleaded guilty (R. 250, 253; Ex. 165, R. 712, 1034). On Glasser's recommendation, Vitale received a sentence of one hour in the custody of the marshal (R. 250-251), a recommendation which he could not subsequently explain to the judge (R. 253). Shortly after, Vitale's residence was raided, a still was seized, and a car was found in the garage a few feet from the residence (R. 218-219; Ex. 36). The car had been used in the distilling business (R. 219, 224; Ex. 210, report dated August 31,

1938). In a libel action against the car, Vitale's wife, Rose, was the claimant (R. 218-219, 222; Ex. 36). Without contradiction by Glasser, who represented the Government, Roth, counsel for Vitale's wife, stated at the hearing that Vitale was "O. K." and that the car was not used for illegitimate purposes. When Dowd, an Alcohol Tax Unit investigator who had investigated the case, and who was present at the proceeding, protested to Glasser that the full facts were not being disclosed, and asked to be allowed to testify, Glasser ordered Dowd out of the courtroom and the libel was dismissed. (R. 219-220.) Dowd subsequently reported to Glasser that Vitale had boasted that "he got out of this for nine hundred dollars" and that Dowd had interviewed a number of witnesses to whom Vitale spoke (R. 221). Glasser took no action (*ibid.*).

Direct evidence of the participation of Roth and Glasser in the conspiracy.—In addition to the evidence summarized above relating to their participation in the cases, other direct evidence was presented concerning Roth and Glasser.

In respect of Roth, the following testimony was adduced: the Wroblewskis were indicted in the Northern District of Indiana for conspiracy (R. 680). Alexander Campbell, an assistant United States attorney in that district, testified that Roth appeared in his office and inquired whether "some arrangement can be made so that [the Wroblewskis] will not be indicted." Roth offered Camp-

bell \$500 or \$1,000. When Campbell refused, Roth replied "Well, that is the way we handle cases in Chicago sometimes." (R. 681-682.) Subsequently Roth asked Campbell to use his influence to stop the investigation which led to the present case (R. 683-685).

There was also direct evidence concerning Glasser's role in the conspiracy. We have already pointed out the repeated and corroborated testimony concerning Kretske's statements that the payments of money were to go to "Red" (Glasser) (R. 226, 230, 243, 297, 305-306, 471, 475, 510, 543, 547). In addition, Raubunas testified, though perhaps not entirely convincingly, that on three occasions he saw Glasser and Kretske, in a car, pick Kaplan up on a street corner (R. 457-458, 462), while another witness, Svec, testified to facts indicating meetings between Glasser and Yarrio (R. 563-564), a bootlegger who had been indicted but never convicted (R. 194, 195, 699, 211). Further, there was testimony that Glasser, after Frank Hodorowicz had been indicted, apologized to Frank, and explained that he would have to convict Frank because the situation was becoming uncomfortable for Glasser (R. 302, 303-304). Hodorowicz also testified that Glasser advised him on a choice of his attorney (R. 302-303). Glasser's direct participation is also indicated by his expulsion of Dowd from the court room in the Rose Vitale libel case (R. 219-220) and by Glasser's release of Joppek (R. 249-250) and Raubunas

(R. 463-465). Finally, there is uncontroverted evidence that Glasser received and accepted a case of liquor sent to him for Christmas by Frank Hodorowicz (R. 302).

Summary.—No single case and no single incident compel the conclusion of Glasser's guilt. Nevertheless the cumulative effect is considerable. A common pattern runs throughout the specific cases here involved: In the preliminary stages of a case, either just before or after indictment, Horton (or in some cases Miller or Brantman), displaying a suspicious advance knowledge of the proceedings, sought out the potential defendants. The latter were directed, usually by Horton, to Kretske. Kretske, in turn, suggested his ability to "fix" the case and solicited money, announcing it was to go to Glasser. Kretske then referred the matter to Roth. Thereafter, except where payment had been refused or where the evidence indicated Glasser found he must proceed because of pressures, the case, in one way or another, died. Against this is the persuasive evidence of the guilt of the potential defendants, evidence which was available to Glasser at the time. And finally, there is Glasser's inability, on the stand, satisfactorily to explain the history of many of these suspicious cases.²⁰

²⁰ Glasser's credibility was, of course, an issue for the jury. And his credibility was seriously impaired by his uncertain testimony on cross-examination and by his self-contradictions. Thus, in connection with the case in which

These circumstances, coupled with the direct evidence of Roth's and Glasser's participation, were, we submit, sufficient to permit the jury to conclude that the defendants were guilty. There was sharply conflicting evidence. Glasser's own credibility was crucial, and, in general, the issues were largely issues of credibility. The case, then, was one peculiarly within the province and competence of the jury. There was sufficient evidence to permit the jury to resolve the issues and to justify its conclusion.

II

THE RECORD SHOWS THAT THE INDICTMENT WAS RETURNED IN OPEN COURT BY THE GRAND JURY

Petitioners contend (Glasser Br. 12-20; Kretske Br. 20-24; Roth Br. 56-59) that the record fails to show that the indictment was returned in open court by the grand jury. No contention seems to be made that the indictment was not in fact returned in open court.

Vitale was sentenced to one hour in the custody of the marshal. Glasser first testified that he did not tell the judge about another offense which had been reported to him (R. 998) and then that he was "anxious to tell Judge Wilkerson the type of fellow Vitale was and I did" (R. 999). Again, he testified that he was "trying to get the Hodorowicz" (R. 1004), but admitted that the Alcohol Tax Unit's report on the general investigation of the Hodorowicz group "probably" contained evidence of substantive offenses against many members of the group who were not prosecuted (R. 1005-1007).

The *placita* (R. 1) discloses the convening of the District Court for the Northern District of Illinois, Eastern Division, "on the first Monday of September [1939] (it being the twenty-ninth day of September the indictment was filed)" and recites the presence of the various judges of the court, including District Judge Stone who sat as a member by designation and presided at the trial, the marshal, and the clerk. On the face of the indictment appears the endorsement "Filed in open court this 29th day of Sept., A. D. 1939, Hoyt King, Clerk," preceded by the notation "A true bill, George A. Hancock, Foreman" (R. 38).

These records are sufficient to show the proper return of the indictment. In *Ledbetter v. United States*, 108 Fed. 52 (C. C. A. 5), the court, in deciding the sufficiency of the record to show that the indictment there involved had been returned in open court, had before it the minute entry, "Nov. 21, 1899. The grand jury came into court and returned 52 bills of indictment, each of which was indorsed 'A true bill,' and signed by Jas. W. Powell as foreman", and a file mark of the clerk of court, "Filed in open court this 21st day of November, 1899. J. W. Dimmick, Clerk." The court stated (p. 55):

* * * It seems to be well settled that the record must show that the indictment was returned into court by the grand jury *either* by a minute entry to that effect *or by in-*

dorsement of the fact upon the indictment itself * * * [Italics supplied.]¹

The endorsement on an indictment—"Filed in open court,"—together with the date and clerk's signature, has been deemed a sufficient record entry by several state courts. See *Mose v. The State*, 35 Ala. 421; *People v. Blackwell*, 27 Cal. 65; *Westcott v. State*, 31 Fla. 458; *William Goodson v. The State of Florida*, 29 Fla. 511; *Spencer v. Gomez*, 114 Fla. 688, 695; *The State v. Crilly*, 69 Kan. 802, 77 P. 701; *State v. Luce*, 194 Iowa 1306, 191 N. W. 64.² And the endorsement—"A True Bill"—signed by the foreman, and the word "Filed", followed by the date and signature of the clerk of court, was deemed a sufficient record entry in at least two cases. See *State v. Grate*, 68 Mo. 22; *Cooper v. State*, 59 Miss. 267.

But the endorsement on the indictment is not the only record showing of a return in open court. There appears in the record, immediately after the clerk's endorsement on the indictment, the following (R. 38-39):

* * * on the 29th day of September A. D. 1939, being one of the days of the regular September term of said Court, in

¹ The record entries were held to be sufficient even though the court had to refer to the bill of exceptions to identify the indictment, the caption thereof having been erroneously entitled "Circuit Court" when in fact it had been returned in the district court.

² One case, *Shinn v. State*, 93 Ark. 290, is to the contrary.

the record of proceedings thereof, in said entitled cause [the title of this case as No. 31825 in the District Court is contained at the top of the same page], before the Honorable James H. Wilkerson District Judge appears the following entry, to-wit:

UNITED STATES DISTRICT COURT

Northern District of Illinois

(Date) Sep. 29, 39.

Cause No. -----

Title of Cause -----

Df. Ex. 1

11/7/39.

Brief Statement of Motion

The Grand Jury return 4 indictments in open Court. Added 10/30/39

Name of moving Counsel

Representing

Order discharging Grand Jury of Sept. Term 1939.

Name of opposing Counsel (if any)

JHW

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

The notation, "The Grand Jury return 4 Indictments in open Court. Added 10/30/39," was made by Judge Wilkerson (JHW) on a form. Since this form with Judge Wilkerson's notation is an entry in the record of the proceedings in this case (R. 38), it is manifest that the notation can

be interpreted in no other way than as including the indictment under which petitioners were prosecuted. The entry in its setting would be totally irrelevant under a contrary interpretation.

This entry was, we think, ordered by Judge Wilkerson to be made so that the record might more specifically show that the indictment was returned in open court by the grand jury and thereby to avert, on the motion to quash, the technical argument now advanced here. This does not vitiate the validity of the entry. A *nunc pro tunc* order may be made at a later term to amend or correct the record to make it conform to the actual facts. *Gagnon v. United States*, 193 U. S. 451; *In re Wight, Petitioner*, 134 U. S. 136, 144-147; *Downey v. United States*, 91 F. (2d) 223, 233-234 (App. D. C.); *Slade v. United States*, 85 F. (2d) 786, 787 (C. C. A. 10); *Rardin v. Messick*, 78 F. (2d) 643, 645 (C. C. A. 7); *United States v. Bishop*, 47 F. (2d) 95, 96 (C. C. A. 5); *International Harvester Co. v. Carlson*, 217 Fed. 736, 738 (C. C. A. 8); *Cornette v. Baltimore & O. R. Co.*, 195 Fed. 59, 60-61 (C. C. A. 3); *United States v. Stoller*, 180 Fed. 910, 913 (E. D. Wash.); *Sweeney v. Greenwood Index-Journal Co.*, 37 F. Supp. 484, 487 (W. D. S. C.). Here there was an endorsement on the indictment of "Filed in open court," which might possibly not be interpreted as showing the return in open court by the grand jury. The addition of, "The Grand Jury return * * * in open Court," amends and clarifies the written

endorsement on the indictment. It is not necessary to the validity of a *nunc pro tunc* order that the defendants be given notice thereof before its entry. *United States v. Bishop*, 47 F. (2d) 95, 96 (C. C. A. 5).

It is clear, therefore, that the record affirmatively shows the return of the indictment in open court by the grand jury. Even if it were assumed that this record showing was made without authority, as petitioners contend, it nevertheless reflects the actual facts relating to the return. Consequently petitioners' argument on this point must be interpreted as addressed to a technicality of form.³ Title 18, Section 556, U. S. C., directs that:

No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, * * *.

Petitioners have not attempted to show prejudice resulting from the lack of record entries different than those which actually appeared.⁴

³ Compare *Breese v. United States*, 226 U. S. 1, in which the Court held that the *fact* that the return was not made in open court by the grand jury as a body "was a defect in the matter of form only" (p. 11).

⁴ The case of *Crain v. United States*, 162 U. S. 625, cited and quoted from by petitioners, requires only an *affirmative* showing of *arraignment* in the record.

III

THE DISTRICT COURT PROPERLY REFUSED TO QUASH
THE INDICTMENT ON THE GROUND OF ALLEGED
ILLEGAL COMPOSITION OF THE GRAND JURY

Petitioners contend that the trial court erred in denying their motion to quash the indictment on the ground that the grand jury was illegally constituted because of the deliberate exclusion of women's names from the container from which the grand jurors' names were selected (Roth Br. 67-70; Glasser Br. 20-23; Kretske Br. 19-20). The gist of petitioners' argument is that the Illinois laws, effective prior to the summoning of the grand jury in the instant case,¹ required the jury lists throughout the state to contain names of women, and that the jury commissioner and the court clerk disregarded the man-

¹ The grand jury was summoned on August 25, 1939 (R. 144-145, 148, 1118). On May 12, 1939, there were approved two amendatory acts of the legislature of Illinois. Section 1 of Chapter 78 of the Illinois Revised Statutes, 1939, applies to counties not having jury commissioners (see Illinois Revised Statutes, Chapter 78, Section 2), and provides:

"The county board of each county shall, at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct of the county, giving the place of residence of each name on the list, to be known as the jury list."

Section 25 of Chapter 78 of the Illinois Revised Statutes, 1939, applies to counties having jury commissioners (see Illinois Revised Statutes, 1939, Ch. 78, Sec. 24) and provides, in part:

date of 28 U. S. C. 411² by omitting the names of women from the grand jury list. We submit, however, that the composition of the grand jury was proper, and even if this were not so, the motion to quash the indictment was properly overruled.

Section 1 of Chapter 78 of the Illinois Revised Statutes (1939) provides that—

The county board of each county shall, at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of a sufficient number * * * of each sex * * * to be known as the jury list.

Petitioners insist that this provision requires the inclusion of women on the grand jury sum-

"The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list. * * *

These amendatory acts became effective July 1, 1939 (Article IV, Section 12, Illinois Constitution). On August 8, 1939, the Supreme Court of Illinois upheld the constitutionality of Section 25 of Chapter 78. *People v. Traeger*, 372 Ill. 11.

² This section provides:

"Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications * * * and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned."

moned on August 25, 1939.³ But the statute is unambiguous in permitting county boards to make up their county lists *at*, as well as before, their September meetings, and in addition, in permitting to boards to make up a list "at any time thereafter, when necessary for the purpose of this Act." We think it to be plain that the statute did not require the calling of women at the time here in controversy.⁴

³ The Government, in its brief in the court below, conceded that "it was the law in Cook County that jury commissioners should place women on jury lists on and after July 1, 1939" (page 18). This concession was based upon the holding of *People v. Traeger*, 372 Ill. 11. A study of this case, however, discloses that the sole problem before the court was whether the legislative act making women eligible for jury duty violated the Illinois constitution. The statute, both before and after amendment, provided, *inter alia*, that the jury "list may be revised and amended annually in the discretion of the commissioners." This case arose on a petition for a writ of mandamus against the commissioners "to test the constitutionality of an act [woman jurors] * * *." The court simply held that during the course of such a voluntary, discretionary, annual revision, the commissioners must include the names of eligible women. The problem was not presented, nor did the court decide, whether mandamus would be granted against the commissioners to compel them to engage in an annual revision and amendment, if they did not do so voluntarily.

⁴ We do not contend, as claimed by petitioner Glasser (Br. 22), that only women whose names appeared on the lists of the county boards were eligible for federal jury service. We simply maintain that so brief a period elapsed between July 1, 1939, the effective date of the state law rendering women eligible as jurors (held constitutional August 8, 1939) and August 25, 1939, the date the grand jury was summoned, that it was not error to omit the names of women from the federal jury list where it was not shown that women's names had yet appeared on the state jury lists.

Even assuming that the selection of the grand jury was technically irregular because of the omission of women, the denial of petitioners' motion to quash on that ground was not error. The question in issue here is not one of the inclusion of disqualified persons^{*} nor is it one of systematic and arbitrary exclusion of persons solely because of their race or color in a case in which the defendant belongs to the excluded race or color. Cf. *Norris v. Alabama*, 294 U. S. 587. The question here raised is quite different. Prejudice to the defendant's case is justly inferable where there is racial exclusion; but where women are excluded, although eligible, at most there is irregularity without implication of injury. *Wuichet v. United States*, 8 F. (2d) 561, 563 (C. C. A. 6); *United States v. Ballard*, 35 F. Supp. 105, 107 (S. D. Calif.).

It is well established that an indictment cannot be quashed, nor a plea in abatement thereto be sustained, merely because of an irregularity in the drawing of the grand jury, where no prejudice to the accused is shown. *Agnew v. United States*, 165 U. S. 36, 44; *United States v. Parker*, 103 F. (2d) 857, 859 (C. C. A. 3), certiorari denied, 307 U. S. 642; *Walker v. United States*, 93 F. (2d)

^{*} For this reason, *Crowley v. United States*, 194 U. S. 460, and similar cases cited by petitioner Roth (Br. 69-70) and Kretske (Br. 19) are not relevant. Petitioners contend only that persons equally competent were excluded. See *United States v. Gale*, 109 U. S. 65, 70.

383, 391 (C. C. A. 8), certiorari denied, 303 U. S. 644; *Morrison v. United States*, 71 F. (2d) 358, 359 (C. C. A. 5), certiorari denied, 293 U. S. 589; *Moffatt v. United States*, 232 Fed. 522, 528 (C. C. A. 8); *Stockslager v. United States*, 116 Fed. 590, 596 (C. C. A. 9); *Brookman v. United States*, 8 F. (2d) 803, 806 (C. C. A. 8).⁶

In *Hyde v. United States*, 225 U. S. 347, this Court said (p. 374):

It is not shown that any juror was disqualified, nor is it shown that the grand jury was composed of jurors not selected by the commission. It is alleged, it is true, that names which had been put in the box by the commissioners had been taken out by Harstock, and that he put back only those that he deemed fit and proper. It follows, of course, from this that had all of the original names been in the box the grand jury might have been differently composed, but from this it cannot be inferred that injury or prejudice resulted to the defendants.

The burden is upon the defendants to show by averment of specific facts that they were preju-

⁶ In *United States v. Cornell*, 25 Fed. Cas., No. 14,868, at 656 (D. R. I. 1820). Justice Story, in denying a motion for a new trial in a murder case said: "Even if a juror had been set aside by the court for an insufficient cause, I do not know that it is a matter of error, if the trial has been by a jury duly sworn and impaneled, and above all exceptions. Neither the prisoner nor the government in such case have suffered any injury."

diced by the alleged irregularity. *Brookman v. United States*, 8 F. (2d) 803, 806 (C. C. A. 8).⁷ Petitioners have failed to sustain this burden and, therefore, the motion to quash was properly overruled. See also *Salen v. State*, 231 Wis. 489 (1939).⁸

IV

THE INDICTMENT IS NOT FATALY DEFECTIVE

A. THE SECOND COUNT OF THE INDICTMENT DOES NOT CHARGE A CONSPIRACY TO VIOLATE THE BRIBERY STATUTE

Petitioners Glasser (Br. 30-31) and Roth (Br. 65-66) urge that the charging part of count 2 (par. 14, R. 28) is framed in the words of Title 18, Section 91, U. S. C., and that, therefore, the count is defective because in effect it charges a conspiracy

⁷ *People v. Mack*, 367 Ill. 481; *People v. Clampitt*, 362 Ill. 534; *People v. Schraeberg*, 347 Ill. 392; *People v. Fudge*, 342 Ill. 574; *People v. Mankus*, 292 Ill. 435; *People v. Linquist*, 289 Ill. App. 250, all cited on page 70 of Roth's brief, illustrate the Illinois rule that no prejudice need be shown where no attempt is made to adhere to the statutes relating to the drawing of the grand jury, but that prejudice need be shown only when an irregularity occurs after an attempt to comply with the law. It is obvious, however, that the Illinois rule, so far as it specifies no prejudice need be shown, is inconsistent with the federal holdings. See also *Salen v. State*, 231 Wis. 489.

⁸ Moreover, since the petitioners are not members of the class allegedly excluded from the jury lists they are in no position to complain. *United States v. Gilbert*, 31 F. Supp. 195 (S. D. Ohio); *State v. James*, 96 N. J. L. 132, 142-145 (1921); *McKinney v. State*, 3 Wyo. 719, 726-729 (1892); *Griffin v. State*, 183 Ga. 775, 778 (1937); *Commonwealth v. Garletts*, 81 Pa. Super. 271, 276 (1923).

to commit a substantive offense requiring concerted action. They contend that, consequently, it cannot be the subject of a conspiracy under Title 18, Section 88, U. S. C. It is unnecessary here to inquire whether "the conclusion would follow from the premises, since it is clear that the premises are not true" (*United States v. Manton*, 107 F. (2d) 834, 839 (C. C. A. 2), certiorari denied, 309 U. S. 664).

Paragraph 14 of count 2 (R. 28) charges that the defendants named—

* * * conspired * * * to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by a United States Attorney or an Assistant United States Attorney to prosecute certain delinquents for crimes and offenses cognizable under the authority of the United States as the same should be presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud, more particularly its right to a conscientious, faithful, and honest representation of its interests in certain suits, controversies, proceedings, matters, actions, and causes brought and pending in the United States Courts in the Northern District of Illinois; * * *

The charge is clearly stated as a conspiracy to defraud the United States, which is a crime *per se* without reference to any substantive offense. *United States v. Manton, supra*; *Crawford v.*

United States, 212 U. S. 183; *United States v. Holt*, 108 F. (2d) 365 (C. C. A. 7), certiorari denied, 309 U. S. 672; *United States v. Orr*, 223 Fed. 220 (D. R. I.); *United States v. Milner*, 36 Fed. 890 (N. D. Ala.). The charge of defrauding the United States by depriving it of its lawful governmental functions by dishonest means is a defrauding within the conspiracy statute (U. S. C., Title 18, Sec. 88). *Hammerschmidt v. United States*, 265 U. S. 182, 188; *Haas v. Henkel*, 216 U. S. 462, 479; *United States v. Manton, supra*.

Bribery is alleged in paragraph 14 (R. 28) only as the "deceit, craft or trickery" or "means that are dishonest" (*Hammerschmidt v. United States, supra*, p. 188) by which the defendants conspired to defraud the United States. The allegation is of conspiracy to defraud the United States with respect to its lawful governmental functions "by promising, offering, causing and procuring to be promised and offered, money * * * to an officer of the United States * * *, with intent to influence his decision and action" in official matters, "and with the intent to influence such officer or officers * * * to collude in committing certain frauds on the United States," and "to induce such officer or officers to do or omit from doing certain acts in violation of his or their lawful duty" [Italics supplied]. This language is, of course, part of the charging portion of the count, but the mere fact that it relates to bribery does not, as petitioner Glasser contends, convert the charge of conspiracy to defraud the United States through

the use of bribery into a charge of conspiracy to commit the substantive offense of bribery.

There is no allegation in count 2 that the defendants conspired to commit a substantive offense nor is there reference made to the offense of bribery contained in Title 18, Section 91, U. S. C.¹ Such allegations are contained in count 1, which specifically alleged that the defendants conspired to violate the bribery statute (R. 8-9). That count was dismissed when the Government elected to stand upon count 2 (R. 100).

Plainly, here as in *United States v. Manton*, *supra*, p. 839:

* * * The indictment does not charge as a substantive offense the giving or receiving of bribes; nor does it charge a conspiracy to give or accept bribes. It charges a conspiracy to obstruct justice and defraud the United States, the scheme of resorting to bribery being averred only to be a way of consummating the conspiracy and which, like the use of a gun to effect a conspiracy to murder, is purely ancillary to the substantive offense. * * *

See also, *Crawford v. United States*, 212 U. S. 183, 188-192; *United States v. Milner*, 36 Fed. 890 (N. D. Ala.). Cf. *United States v. Holt*, 108 F.

¹ Throughout count 2, in the paragraphs charging the manner and means (par. 15, R. 29) of executing the object of the conspiracy (par. 15-39, R. 29-37), the use of bribery as a means of *defrauding the United States* is repeatedly alleged in the following language: "to * * * aid the defendants in committing a certain fraud on the United States" (par. 17, R. 29); in order "to collude in a fraud on

(2d) 365, 368 (C. C. A. 7), certiorari denied, 309 U. S. 672; *United States v. Orr*, 223 Fed. 220 (D. R. I.).

B. THE SECOND COUNT IS NOT VAGUE, INDEFINITE, OR UNCERTAIN,
NOR DOES IT STATE IMPROPER CONCLUSIONS

Each of the petitioners (Glasser Br. 27-30; Kretske Br. 24-43; Roth Br. 59-65) contends that the second count of the indictment is fatally defective for vagueness and failure to inform them of the charges against them. We submit that these contentions are without merit.

The allegations of the indictment (see especially paragraphs 1-13, R. 22-27) follow the same pattern of the allegations of a similar count held to be sufficient in *Crawford v. United States*, 212 U. S. 183. The rule has been established that the allegations of a conspiracy indictment must show "certainty, to a common intent." *Williamson v. United States*, 207 U. S. 425, 447; *Thornton v. United States*, 271 U. S. 414, 424. Paragraph 14

the United States" (par. 18, 23; R. 29-30, 30-31); "to allow a fraud to be committed on the United States" (par. 19, 24; R. 30, 31); "to make opportunity for the commission of a fraud on the United States" (par. 20, 25; R. 30, 31); "to unlawfully commit a fraud on the United States" (par. 30, R. 32); so that "a fraud would be committed on the United States" (par. 33, R. 33-34); to influence Glasser and Kretske "in their official capacity" (par. 15, 16, 29, 33; R. 29, 32, 33-34); to influence defendants Glasser and Kretske to do certain acts "in violation of" their "lawful duties" as assistant United States attorneys (pars. 21, 22, 26, 27, 31, 32, 35; R. 30, 31, 32-33, 34); and to influence defendants Glasser and Kretske "unfaithfully [to] discharge their duties toward the United States as Assistant United States Attorneys" (par. 28; R. 31-32).

of count 2 (R. 28) clearly alleges the object of the conspiracy and paragraphs 15-39 are devoted to detailing the precise manner and means of effecting the object of the conspiracy. Several overt acts are set out (R. 37, 17-21). We think the test of "certainty, to a common intent" is fully met. It was not necessary to apprise the defendants of the details of each transaction, involving solicitation of money, which they conspired to execute to defraud the United States. In a charge of conspiracy "the conspiracy is the gist of the crime," "it may, therefore, be assumed that the persons who were to be" solicited, "and the time and place of such" solicitation, "had not been determined at the time of the conspiracy" (*Williamson v. United States, supra*, pp. 447, 449). Further (*Williamson v. United States, supra*, p. 449):

* * * It was not essential to the commission of the crime that in the minds of the conspirators the precise persons to be suborned [solicited here] or the time and place of such suborning [soliciting], should have been agreed upon, and as the criminality of the conspiracy charged consisted in the unlawful agreement to compass a criminal purpose, the indictment, we think, sufficiently set forth such purpose.

A fortiori, it was unnecessary to allege particular "questions, matters, causes, proceedings, fraud, act, or omission of act" (Roth Br. 62) in connection with the object of the conspiracy.

Nor was it necessary to allege particulars con-

cerning time, place, circumstances, causes, and the like in stating the manner and means of effecting the object of the conspiracy. *Crawford v. United States*, 212 U. S. 183, 192; *Dealy v. United States*, 152 U. S. 539, 543; *Houston v. United States*, 217 Fed. 852 (C. C. A. 9), certiorari denied, 238 U. S. 613; *Enrique Rivera v. United States*, 57 F. (2d) 816, 819 (C. C. A. 1). Cf. *Lamar v. United States*, 241 U. S. 103. As stated in *Houston v. United States*, *supra*, p. 856, "It is enough if such an indictment contain a general description of the means."

The specificity of detail urged by petitioners is not essential to the sufficiency of count 2; it comes within the scope of a motion for a bill of particulars. Petitioners did, in fact, request (R. 61-75), and secure (R. 76-92), many of these very details. But, as this Court stated in *Hagner v. United States*, 285 U. S. 427, at p. 431:

* * * *The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, "and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction."* *Cochrane and Sayre v. United States*, 157 U. S. 206, 290; *Rosen v. United States*, 161 U. S. 29, 34. [Italics supplied.]

Count 2 meets this test.

V

THE DISTRICT COURT PROPERLY OVERRULED PETITIONERS' MOTION FOR A NEW TRIAL BASED ON THE ALLEGED EXCLUSION FROM THE PETIT JURY PANEL OF WOMEN NOT MEMBERS OF THE LEAGUE OF WOMEN VOTERS

Petitioners contend¹ that reversible error resulted from the overruling of their motion for a new trial based on the ground that all the names of women in the box from which the petit jurors were selected were presented to the clerk of the district court by the Illinois League of Women Voters. Petitioners assert that they were deprived of a trial by a fair and impartial jury and denied due process of law because: (1) all the women whose names were presented by the League attended jury classes at which the views of the prosecution were presented; (2) the names of women otherwise qualified and eligible for jury service were deliberately excluded from the box from which the panel was selected; and (3) the court clerk and jury commissioner unlawfully delegated their statutory duty under U. S. C., Title 28, Sec. 412,² to the League, since

¹ Glasser Br. 23-25; Roth Br. 22-24; Kretske Br. 43-44. It does not appear that Kretske sought a new trial on this ground. The only affidavits appearing in the record which raised this question are Glasser's and Roth's (R. 1049-1057).

² This section provides: "All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred

the names of all the women placed in the box were presented to them by the League. We submit that these contentions are without merit.

The facts of record substantiate neither the premise that all the women's names were presented by the League, nor the premise that any of them had the "views of the prosecution" presented to them. The record merely contains notations that the motion for new trial, made orally, apparently, on March 8, 1940, was argued on April 22 and continued to April 23 for disposition (R. 102); and that on April 23 the court denied the motion and granted leave to petitioners Glasser and Roth to file certain affidavits (R. 103). It is upon the allegations in two of these affidavits that petitioners' present contentions are based (R. 1049-1057).

What evidence or argument the Government adduced to counter these two affidavits does not ap-

persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein."

pear from the record.³ In these circumstances it is not improper to assume that the ruling of the district court was based upon the conclusion that the allegations in the two affidavits, founded solely upon an article in the American Bar Association

³ Petitioners' assertion (Glasser Br. 24-25; Roth Br. 23) that since the United States Attorney neither filed a counter affidavit nor a formal denial, the allegations of the affidavits for the purposes of the motion must be deemed true, is an unwarranted assumption. Since the record discloses that the affidavits were filed after the argument and the court's ruling on the motion (R. 103), presumably to make them part of the record, the Government need not have filed counter affidavits or a formal denial of the petitioners' affidavits. But, in any event, the mere omission of a counter affidavit or a formal denial does not operate as a concession of the truth of the allegations of the affidavit. The three cases cited by petitioners in support of their position are *Neal v. Delaware*, 103 U. S. 370, 395-396; *Ogden v. United States*, 112 Fed. 523, 525-527; and *United States v. Chares*, 40 Fed. 820, 823. The *Neal* case is clearly distinguishable on its facts. Not only did the state fail to file a counter affidavit or a formal denial, but it also made no objection to the allegations of the affidavit at the hearing. Further, the court found an implied stipulation by the state that it was willing to risk determination upon the case made by the defendants' affidavit in connection with any facts of which the court would take judicial notice. See also the dissenting opinions of Chief Justice Waite and Justice Field. The *Ogden* case involved a situation where the allegations of the affidavit were wholly uncontradicted. In the case at bar the petitioners merely specify that their affidavits were uncontradicted by a counter affidavit or a formal denial. They make no claim that the allegations of the affidavit were not contested at the hearing on the motion for a new trial. The *Chares* case fails to illuminate the problem. That case merely held that it was error for the trial court to overrule a plea which was merely defective in form. It is quite

Journal (R. 1050-1057),⁴ were without merit and contrary to fact in the instant case.⁵

Even assuming that only the names of League members were placed in the container from which the jury was drawn, and that it constituted a technical irregularity, nevertheless, in the absence of a showing of prejudice, the petitioners have no cause for complaint.⁶ *Hyde v. United States*, 225 U. S. 347, 374; *Walker v. United States*, 93 F. (2d) 383, 391 (C. C. A. 8), certiorari denied, 303 U. S. 644; *Agnew v. United*

sufficient merely to contest the verity of the affidavit at the hearing. Cf. *Breese v. United States*, 203 Fed. 824, 827 (C. C. A. 4). The petitioners have not disclosed by their bill of exceptions what transpired at the hearing on their motion for a new trial. There is nothing, therefore, to exhibit the factual situation presented to the court or the premises upon which the court predicated its decision. There is no showing that the Government did not deny the allegations of the affidavits at the hearing.

⁴ "Woman and the Law," Vol. 26, No. 4—April 1940.

⁵ In fact, the allegations in the affidavit are not supported by the article. Thus the affidavits claim that only League members were summoned for jury service, yet the article discloses that at least one nonmember was summoned (R. 1052). The petitioners allege (R. 1050; Glasser Br. 26; Roth, Br. 22) that the League members attended jury classes where they were "presented with the views of the prosecution," yet the article asserts only that "all the information we had had been given us by members of the Bar Association and distinguished judges" (R. 1053).

⁶ Clearly this situation is not related to the problem of systematic and arbitrary exclusion of persons in the selection of a jury. *Wuichet v. United States*, 8 F. (2d) 561, 563 (C. C. A. 6).

States, 165 U. S. 36, 44; *United States v. Parker*, 103 F. (2d) 857, 859 (C. C. A. 3), certiorari denied, 307 U. S. 642; *Brookman v. United States*, 8 F. (2d) 803, 806 (C. C. A. 8). The petitioners have failed to sustain the burden of showing that they were denied a substantial right. *Shuman v. United States*, 16 F. (2d) 457 (C. C. A. 5); *Armstrong v. United States*, 16 F. (2d) 62 (C. C. A. 9), certiorari denied, 273 U. S. 766. The alleged exclusion of qualified women other than League members constitutes, at most, "an irregularity without implication of injury." *Wuichet v. United States*, 8 F. (2d) 561, 563 (C. C. A. 6). It is possible that if the names of other qualified women jurors had been in the box, the personnel of the jury might have been differently constituted, but from this neither injury nor prejudice can be inferred. *Hyde v. United States*, 225 U. S. 347.

Petitioners further urge that the court clerk and jury commissioner unlawfully delegated their statutory duty under U. S. C., Title 28, Sec. 412, to the League. But the statute governing the drawing of jurors restricts the court clerk and jury commissioner by only two specific limitations. They are required to place in the box only the names of qualified persons, and they must put at least three hundred such names therein. Of course, no organization or group may dictate what names

may be placed in the box.⁷ There is, however, reposed in the court clerk and jury commissioner broad discretion in the fulfillment of their duties. The law is established that as long as they do not abdicate their functions, they are permitted to exercise a reasonable degree of selectivity in determining the names placed in the box. They may properly predicate their action upon advice and information obtained from appropriate sources. *Walker v. United States*, 93 F. (2d) 383, 390-391 (C. C. A. 8), certiorari denied, 303 U. S. 644; *Wilson v. United States*, 104 F. (2d) 81, 82 (C. C. A. 5), certiorari denied, 308 U. S. 574; *United States v. McClure*, 4 F. Supp. 668, 671 (E. D. Pa.). The clerk's and jury commissioner's method of selection was not a delegation, but only a discharge of their duty; they did not attempt to authorize anyone to execute their duty. The law does not contemplate that they must act on personal knowledge of the qualifications of prospective jurors. The manner of obtaining information is for them to determine. *Walker v. United States*, *supra*, at 391; *United States v. Shannabarger*, 19 F. Supp. 975 (W. D. Mo.), reversed on other grounds, 99 F. (2d) 957 (C. C. A. 8); *Cartello v. United States*, 93 F. (2d) 412 (C. C. A. 8).

⁷ In the affidavits filed by petitioners Glasser and Roth there was nothing to show that the League attempted to dictate that only the names of those selected by them should go into the box from which the jury was selected (R. 1047-1051).

Finally, petitioners first raised their objections to the composition of the jury list on a motion for a new trial. The disposition of such a motion rests in the sound discretion of the trial judge (*United States v. Holt*, 108 F. (2d) 365 (C. C. A. 7), certiorari denied, 309 U. S. 672, rehearing denied 309 U. S. 698; *Sanchez v. United States*, 108 F. (2d) 735 (C. C. A. 5), certiorari denied 309 U. S. 679; *Smith v. United States*, 106 F. (2d) 726 (C. C. A. 4)) and his denial of the motion will not be reversed except upon a showing of a clear abuse of discretion. *United States v. Hartenfeld*, 113 F. (2d) 359 (C. C. A. 7), certiorari denied, 311 U. S. 647; *United States v. Dressler*, 112 F. (2d) 972 (C. C. A. 7). Petitioners have made no such showing here.

VI

PETITIONER GLASSER WAS NOT DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL

Petitioner Glasser contends (Br. 31-37) that he was deprived by the trial court of his right to the effective assistance of counsel because one of his attorneys, William Stewart, was assigned by the trial court to represent petitioner Kretske.¹

¹ Petitioner Roth also urges that Glasser was deprived of the right to effective assistance of counsel and adopts Glasser's argument (Br. 66-67). Roth has no standing to raise this point. He was represented throughout the trial by his own attorney (R. 96, 186), and thus could hardly have been affected by any alleged lack of effective representation of Glasser.

The record discloses this contention to be without basis.

On November 1, 1939, George Callaghan entered the appearance of Glasser and himself as attorneys for Glasser (R. 41). On November 2 "Harrington & McDonnell" entered their appearance, as well as that of Kretske, as attorneys for Kretske (*ibid*). Thereafter Callaghan and Harrington represented Glasser and Kretske, respectively, at the hearings on the motion to quash and the demurrers of petitioners Glasser and Kretske (R. 48-54, 58-59, 151).² On January 29, 1940, following the denial of the last of the preliminary motions preceding trial, each of the defendants pleaded not guilty and the cause was set for trial on February 5 (R. 95). On the same day Stewart entered his appearance as "associate attorney" for Glasser (*ibid*). " "

Harrington stated on January 29 that he was engaged in the trial of a case in a state court which probably would last another two or three weeks (R. 176). On February 3 Harrington advised the trial judge that he was still engaged in the state court and was told that he and Kretske would have to be ready to proceed to trial on February 5 (R. 176-177).

On February 5, a motion, signed by Harrington, was filed requesting a continuance for Kretske

² Petitioner Roth also filed a separate demurrer (R. 42-48) and appeared in his own behalf (R. 151).

(R. 96, 173-174). The motion, argued by McDonnell (R. 178-179), was denied that day (R. 96); McDonnell was appointed as attorney for Kretske (*ibid.*); and the cause was continued for trial to February 6 (R. 97). On that date McConnell filed a motion for a thirty-day continuance (R. 179, 183). During the arguments on February 5 and 6 on the two motions for a continuance the trial judge stated that since not only Harrington but also his colleague McDonnell had long since filed a joint appearance for Kretske and, since McDonnell was free, the judge was not disposed to grant a continuance (R. 178-180). On February 6 McDonnell announced that Kretske did not wish to be represented by him (R. 179-180). The court then asked whether Stewart would accept the appointment. Stewart stated that he had previously filed an affidavit on behalf of Glasser "pointing out some little inconsistency in the defense" (R. 180).³ Glasser objected to the appointment of Stewart as attorney for Kretske (R. 181). The matter was then dropped and further discussion ensued between the court, Kretske, and McDonnell. The court reiterated that McDonnell's joint appearance with Harrington had been on file since early in November 1939 and that Harrington had been advised that the case would without fail go to trial on February 5

³ The reference was to the sworn petition of Glasser, filed January 29, requesting, among other things, a separate trial (R. 167-172). This petition was denied the same day (R. 94).

and stated that in view of these circumstances McDonnell would have to stay in until Harrington was free or Kretske retained another attorney (R. 181-182). At this juncture Kretske interposed to say, "I can end this. I just spoke to Mr. Stewart and he said if your Honor wishes to appoint him I think we can accept the appointment." Neither Stewart nor Glasser objected at this point (R. 183) and the court vacated the appointment of McDonnell and appointed Stewart as attorney for Kretske (R. 97, 183).⁴

It thus clearly appears that the very premise of petitioner Glasser's argument is untenable. The record shows that the trial court did not insist that Stewart represent Kretske. On the contrary, Stewart voluntarily accepted the appointment without any objection by Glasser when it was actually made. The most that can be said is that the court originally offered the suggestion that Stewart represent Kretske. But the suggestion was at that time rejected by both Stewart and Glasser and it is clear from the record that the court then abandoned it and returned to McDonnell's acting for Kretske. The record does not, of course, disclose what was said between Stewart and Kretske just before Kretske announced that "we can accept the appointment," but in view of the fact that both Glasser and Stewart had previously objected and

⁴ It is not contended here that the trial court erred in denying Harrington's and McDonnell's motions for a continuance.

that neither voiced any protest at this point, the implication is plain that the matter was discussed between them and Kretske and that Glasser consented to Stewart's appointment. Since the appointment was made with the express consent of Stewart and, at least, the tacit consent of Glasser, the latter cannot now complain that he was deprived of effective assistance of counsel by reason of any action of the trial court.⁵

Petitioner Glasser's further contention (Br. 33-35) that Stewart was embarrassed and inhibited in the conduct of his defense because Stewart also represented Kretske finds no support in the record. The assertion that Stewart failed to object on Glasser's behalf to certain testimony which was inadmissible as against him, because

⁵ *Powell v. Alabama*, 287 U. S. 45, and *Johnson v. Zerbst*, 304 U. S. 458, cited by petitioner Glasser (Br. 36), are inapposite. The question in those cases was whether the accused were denied their right to assistance of counsel. Here Glasser had counsel of his own choice, and the record shows that Stewart was ultimately appointed as attorney for Kretske at Stewart's and Kretske's suggestion and without objection from Glasser, who is himself an attorney. *People v. Bopp*, 279 Ill. 184; *People v. Rose*, 348 Ill. 214; and *People v. Rocco*, 209 Cal. 68, also cited by petitioner Glasser (Br. 36), likewise are not in point. Those cases, too, were concerned with the question whether the trial court, in appointing attorneys for the accused, denied the accused the right to assistance of counsel. In each case it was held that the accused has the right to be represented by counsel who has no interest adverse to his own. Here Stewart's appointment was not forced by the court but resulted from the agreement of the parties concerned.

the jury may have drawn from such objections inferences unfavorable to Glasser or Kretske, or both, is based, first, upon an unsound premise and, second, upon speculation. The testimony complained of was that of several witnesses who related statements made to them by Kretske which implicated Glasser (R. 244-245, 297, 301, 306, 542-543, 631). But the defendants in this case were charged with conspiracy and it is settled beyond controversy that testimony regarding the acts and declarations of one conspirator in furtherance of the conspiracy is admissible as substantive evidence against all the conspirators.*

With reference to the witness Brantman, petitioner Glasser urges that Stewart refrained from cross-examining him "apparently * * * to

* *Logan v. United States*, 144 U. S. 263; *Morrow v. United States*, 11 F. (2d) 256 (C. C. A. 8); *Carnahan v. United States*, 35 F. (2d) 96, certiorari denied, 281 U. S. 723; *Zarate v. United States*, 41 F. (2d) 598 (C. C. A. 5), certiorari denied, 282 U. S. 867; *Minner v. United States*, 57 F. (2d) 506 (C. C. A. 10); *Cendagarda v. United States*, 64 F. (2d) 182 (C. C. A. 10); *Barkley v. United States*, 66 F. (2d) 74 (C. C. A. 4); Wharton, *Criminal Evidence* (11th ed.), secs. 699, 720; Wigmore, *Evidence* (3rd ed.), sec. 1077; see also *Hitchman Coal and Coke Co. v. Mitchell*, 245 U. S. 229. In respect of Glasser's assertion that there was no proof connecting him with the conspiracy, it is sufficient to point out that this was a question for the jury to determine from the facts and circumstances in evidence. *United States v. Manton*, 107 F. (2d) 834, 839 (C. C. A. 2), certiorari denied, 309 U. S. 664; *United States v. Anderson*, 101 F. (2d) 325 (C. C. A. 7), certiorari denied, 307 U. S. 625; *Cruz v. United States*, 106 F. (2d) 828, 830 (C. C. A. 10).

avoid probable prejudice to Kretske" Br. 34). The record negates this contention. When Brantman was recalled for cross-examination Stewart summarily dismissed him, saying, "Your Honor, I asked his man to come back for cross-examination, but I don't want to cross-examine him. I don't want anything to do with him" (R. 711). And in the colloquy which occurred at the time the sentences were imposed Stewart explained his reason for not cross-examining Brantman as follows: "It was not because I was afraid I couldn't show he was lying. I was afraid he would be telling worse lies and it would be worse as far as he is concerned if my client rested on him" (R. 1062).

Thus, petitioner Glasser can point to nothing in this record covering a month-long trial (R. 179, 1045) which shows that he was prejudiced by the fact that Stewart also represented Kretske.⁷

⁷ A cursory examination of the record discloses that Stewart actively defended Glasser's interests. He repeatedly interposed objections to the prosecutor's questions and to evidence offered by the Government (see, e. g., R. 206, 209, 219, 229, 245, 249, 257, 273, 301, 303, 380, 412, 442, 445-452, 519-520, 574, 603-604, 658) and subjected the Government's witnesses to long and searching cross-examination. (See, e. g., R. 200-204, 206-208 (Workman); 212-216 (Frank L. White); 221-222 (Dowd); 232-241 (Swanson); 245-247 (Del Rocco); 276 (Dowiat); 279-280 (Rossner); 292-295 (Walker); 313-341 (Frank Hodorowicz); 346-351 (Anthony Hodorowicz); 363-364 (Donahue); 377-380, 382-383 (Sharp, alias Boguch); 390-392 (Lancaster); 473-518 (Raubunas); 534-536 (Sylvan R. White); 564-568 (Svec); 575-581 (Cole); 591-601, 602-603 (Ellis); 606-608, 610-611

VII

EXHIBITS 81A AND 113 WERE PROPERLY ADMITTED IN
EVIDENCE

All of the petitioners contend that Government exhibits 81A and 113 were improperly admitted in evidence (Glasser Br. 37; Roth Br. 38; Kretske

(Gates); 620-622 (Rankin); 637-639 (William Wroblewski); 667-673 (Abosketes); 676-677 (Edward Wroblewski); 686-689 (Alexander Campbell); 694-697 (Farber)). Stewart was equally vigorous in the presentation of Glasser's defense. He called numerous witnesses on Glasser's behalf (see, e. g., R. 716-720 (Judge Barnes); 722 (Kaplan); 724-728 (Balaban); 737-739, 741-743 (Judge Woodward); 743-744 (Hess); 783 (Weisbrod); 890-905 (Judge Igoo)) and conducted Glasser through a long direct examination (R. 911-954). Indeed, it appears from the record that Stewart took the leading defense role at the trial. Counsel for the other defendants participated only to a very limited extent in the cross-examination of the Government's witnesses (see R. 222, 416, 437, 524, 554, 581, 583). Even the witness Alexander Campbell, who gave incriminating testimony against petitioner Roth, was cross-examined exclusively by Stewart (R. 686-689). And it was Stewart who assumed the lead in attempting to exclude Campbell's testimony (R. 678-679). The defendant Horton, who took the stand as a witness in his own behalf, was questioned on direct examination, not by Balaban, his own attorney (R. 186), but by Stewart (R. 750-762).

Finally, it is significant in appraising Glasser's contention that he was prejudiced because of Stewart's joint representation of him and Kretske, that attorney Callaghan, who filed certain trial motions and pleadings on Glasser's behalf (R. 48-54, 61-65, 141-142), was present at the trial and participated with Stewart in the conduct of Glasser's defense (R. 194-195, 399, 574, 679, 823, 829, 831, 910, 1028, 1029, 1030).

Br. 44). The trial judge, however twice informed the jury that these two exhibits were admitted only against Glasser and not against any of the other defendants (R. 533-534, 539).¹ Neither Roth nor Kretske appears to have standing to urge the point.²

¹ While the trial court stated that "At some further state of the proceedings I may advise you with reference to its competency as to the other defendants * * *" (R. 534). there is nothing in the record to indicate that it was admitted against any other defendant than Glasser. Moreover, since the petitioners have not incorporated in their bill of exceptions the trial judge's charge to the jury, it must be assumed that the jury was properly instructed concerning these exhibits. Cf. *Hall v. United States*, 48 F. (2d) 66, 68 (C. C. A. 9); *Brown v. United States*, 32 F. (2d) 953, 954 (App. D. C.); *Harrod v. United States*, 29 F. (2d) 454, 455 (App. D. C.); *Williams v. United States*, 20 F. (2d) 269, 270 (App. D. C.); *Johnston v. United States*, 154 Fed. 445, 449 (C. C. A. 9); *Kanner v. United States*, 34 F. (2d) 863, 867 (C. C. A. 7).

² Petitioners Roth and Kretske complain of the material concerning the defendant Kaplan which was contained in the exhibits and contend that the admission of the exhibits was prejudicial to Kaplan and that this alleged error is available to them (Roth Br. 38-40; Kretske Br. 44-51). In addition, Kretske implies that the exhibits were received against Kaplan (Br. 49). But the record shows that the exhibits were admitted only as against Glasser (R. 533-534, 539). *Logan v. United States*, 144 U. S. 263, cited by Roth and Kretske for the proposition that error as to one defendant in a conspiracy case is error as to all, is inapposite. There it was held that certain testimony as to acts and declarations of Logan was inadmissible. This Court said: "There being other evidence tending to prove the conspiracy, and any acts of Logan in furtherance of the conspiracy being therefore admissible against all the conspira-

Exhibits 81A and 113 are reports of the Alcohol Tax Unit covering the investigations and seizures of the Western Avenue and Spring Grove stills. They detailed the information which the investigators had gathered with respect to the parts played by the prospective defendants and contained the statements of persons who had given the investigators information connecting the accused with the stills (see also R. 533, 539-540). These reports were submitted to the United States Attorney's office by the Alcohol Tax Unit (R. 451-452, 532) and involved two of the cases in which the Government alleged that the official decisions and actions of Glasser were influenced pursuant to the conspiracy charged in the indictment.

The record clearly indicates that the reports were admitted with the consent and agreement of Glasser's counsel.³ But in any event, the re-

tors as their acts, the admission of incompetent evidence of such acts of Logan prejudiced all the defendants and entitles them to a new trial" (p. 309). Logan, with the other convicted defendants, sued out a writ of error to this Court (p. 276). Here, however, Kaplan did not appeal his conviction (R. 1117). And since the evidence complained of was received only against Glasser, not even Kaplan could have claimed prejudicial error in its admission.

³ Exhibit 81A, the report of the Alcohol Tax Unit on the Western Avenue still, was the first such report offered by the Government. Investigator Campbell, called as a witness for the Government, had begun to state what his investigation of the Western Avenue still had disclosed when Stewart, Glasser's counsel, objected (R. 445). Stewart argued that it was improper to permit the investigator to

ports were competent evidence against Glasser. They showed what evidence of violations was furnished to him in two of the cases involved in the conspiracy alleged in the indictment and were, therefore, directly relevant to the charge that he conspired to defraud the United States of his honest and conscientious services.⁴ Cf. *Laska v.*

testify as to information obtained from other persons during the course of his investigation (R. 446-448). The court agreed and instructed the prosecutor that he was limited in his examination of the investigators to showing what evidence of violations was furnished to Glasser by the Alcohol Tax Unit (R. 448). After further discussion it was brought out that the investigator's report contained the information gathered by him. The court remarked, "Why go any further than that?" Stewart agreed, saying, "That is what would sum it up," and, again, "Then when Mr. Glasser testifies he can explain what value the report had" (R. 449). At the conclusion of the discussion Stewart said: "I think your Honor's suggestion, his [the investigator's] report would be better evidence than anything else as to what he reported, and let him say on top of that, if he told Mr. Glasser anything more." Both the court and the prosecutor agreed with Stewart (R. 451). Exhibits 81A and 113 were not offered and admitted, however, until after further testimony of other witnesses was received (R. 529, 532). With respect to both exhibits the record shows merely that "the defendants objected" (*ibid.*). After the prosecutor had read exhibit 81A to the jury (R. 533), the attorneys for Kaplan and Roth moved that the court declare a mistrial. The motions were denied. Glasser's attorneys did not object at this point (R. 533-534). And other reports of the Alcohol Tax Unit were admitted without objections by the defendants (Exs. 160, 163, R. 708, 712; Ex. 230, R. 1034; see also Ex. 228, R. 1034).

⁴In view of the colloquy which occurred between court and counsel before the reports were introduced (see pre-

United States, 82 F. (2d) 672, 679 (C. C. A. 10). In the light of these reports the jury was better able to appraise Glasser's explanation of his conduct of the cases and of the failure of the grand jury to indict certain of the individuals named in the reports.

VIII

THE CONDUCT OF THE TRIAL JUDGE WAS NOT SUCH AS TO DEPRIVE PETITIONERS OF A FAIR TRIAL

Petitioners contend (Glasser Br. 37-54; Kretske Br. 51-71; Roth Br. 25-40) that the trial judge made remarks prejudicial to them, committed acts of advocacy, questioned petitioners in a hostile manner, and in general failed to maintain an attitude of impartiality, and that they were thereby deprived of a fair trial. From the voluminous record petitioners have selected isolated excerpts which are alleged to support this contention.

ceding footnote), it is not unreasonable to assume that in his instructions to the jury the court properly limited their probative value to the question of notice to Glasser. *Shepard v. United States*, 290 U. S. 96, cited by Glasser (Br. 41), is not in point. In that case testimony of a nurse as to a declaration made to her by the deceased was offered and admitted as a dying declaration *to prove* that the deceased was murdered by her husband, the defendant. This Court held that what was said by the deceased was not admissible as a dying declaration and that the testimony was neither offered nor received for the limited purpose of showing a will to live on the part of the deceased, and accordingly reversed the judgment of conviction.

In not one of the instances cited by petitioners (Glasser Br. 42-54; Roth Br. 25-35; Kretske Br. 51-70) as examples of alleged improper statements and interrogations by the court was there objection by any of the five attorneys representing the defendants.¹ Neither *Williams v. United States*, 93 F. (2d) 685 (C. C. A. 9), nor *Adler v. United States*, 182 Fed. 464 (C. C. A. 5), cited Glasser in his brief in reply to the Government's brief in opposition (pp. 8-9), controls the issue whether failure to object precludes a defendant's claiming error. In the *Williams* case the defendants repeatedly objected to questions propounded by the court and took exceptions to adverse rulings (98 F. (2d), at 690).² The *Adler* case involved a similar situation. And the dictum

¹ R. 196, 230-231, 232, 241, 243, 273, 274, 294, 297, 309-310, 346, 347-348, 349, 536-537, 545, 602, 615, 625, 627-628, 644-646, 816-817, 850-851, 863, 870, 873, 877, 878, 901-903, 920-921, 941, 943, 990-991, 1000-1002, 1022-1023, 1030.

² It further appears that in the *Williams* case, the trial judge assumed an extraordinarily active role; his examination of the witnesses occupied about one-third of the transcript of testimony. See the *Williams* case at p. 690. Wigmore criticizes the *Williams* decision as follows:

"Here the opinion rebuking the trial court for excessive questioning, is itself excessive in its attitude of criticism; moreover, the reference to 'the immemorial limits set down for Anglo-American tribunals' shows how little the opinion is acquainted with those traditions, for a perusal of any modern English trial record would have shown that the attitude here taken in the appellate court would have nullified the proceedings in most modern English criminal trials." Wigmore, *Evidence* (3rd ed., 1940), sec. 784 n. See also section 2551, n. 6.

from the *Williams* case is against the weight of authority, which holds that in the absence of objection allegedly improper statements and questions by the trial court are not reviewable on appeal. As was said in *Troutman v. United States*, 100 F. (2d) 628, 634 (C. C. A. 10): "It has been repeatedly held that ordinarily alleged errors taking place during the trial of a criminal case must be called to the attention of the court and thus afford an opportunity to correct them. It was essential to the review of these questions that they be presented to the trial court in some manner." See also *Buie v. United States*, 76 F. (2d) 848, 849 (C. C. A. 5), certiorari denied, 296 U. S. 585, rehearing denied, 296 U. S. 662; *Mendelson v. United States*, 58 F. (2d) 532, 534 (App. D. C.); *Heinze v. United States*, 181 Fed. 322, 325 (C. C. A. 2); *Burnstein v. United States*, 55 F. (2d) 599 (C. C. A. 9), certiorari denied, 286 U. S. 550; *Callahan v. United States*, 35 F. (2d) 633, 634 (C. C. A. 10); *Cusmano v. United States*, 13 F. (2d) 451, 453 (C. C. A. 6), certiorari denied, 273 U. S. 773; *Baldwin v. United States*, 72 F. (2d) 810, 812 (C. C. A. 9), certiorari denied, 295 U. S. 761.

In any event we submit that petitioners' claims are without merit. They complain of certain questions and statements made by the court during the examination of petitioners and other witnesses. We think, however, that the incidents

viewed in their proper background will show that petitioners' assertions of prejudice are groundless, and that the trial judge's actions were directed to clarifying the record and otherwise contributing to the progress of a long and at times somewhat confused, trial. But "separate passages cut from their context and from the trial as a whole, often have an apparent importance which in fact they do not deserve * * *. * * * nothing conduces less to [insuring an impartial conduct of the trial] than an over jealous scrutiny of every word that may fall from a judge's mouth." *United States v. Warren*, 120 F. (2d) 211, 212 (C. C. A. 2). Accordingly, we have set out some of these incidents, relied upon by petitioners, at length in the margin.³

³ 1. After the witness Swanson had testified as to his arrest, indictment, and arraignment in the Stony Island Avenue case (R. 227-232), he stated, in response to questions by the court, "Then I never heard any more about the case," and that "we didn't pay a fine." The court then asked, "The case just dropped out of midair?" to which the witness replied, "Well, it dropped out" (R. 232). (The Stony Island Avenue case had been stricken with leave to reinstate (appendix, *infra*, pp. 105-107.)) Obviously, there was no impropriety in interrogating the witness as to the disposition of the case. Neither was the court's use of a common idiom improper.

2. Anthony Hodorowicz, testifying concerning his indictment and arraignment in the Stony Island Avenue case (R. 343, 346), stated at the conclusion of his direct examination, "I have never been called to answer that indictment." The court asked, "You were never convicted, never paid a fine, and never went to jail?" to which the witness replied, "No"

On the whole record we do not think there was any impropriety in the conduct of the trial judge. It is settled that federal judges have the right,

(R. 346). Here again the court's questions were designed to elicit the full truth. With respect to the court's examination of Hodorowicz regarding his appearance before Judge Woodward in the Stony Island Avenue case, it is apparent that the court's questions were based upon a mistaken assumption of the nature of the appearance. Hodorowicz had testified that after he had been indicted with Dowiat and Swanson he appeared before Judge Woodward. He stated that "They called us up in front and had us give our names and we went out of court. I did not know when I left the court room when I was supposed to return. I never returned. That is the last I ever heard of that case" (R. 346). He was referring, of course, to the arraignment on the indictment. In his interrogation of the witness the court asked whether Judge Woodward, Glasser, or Roth asked him any questions and when the witness answered in the negative the court asked, "Your recollection is that there was not a complete disclosure of all the facts that connected you with that case?" The witness replied that "It was all in front of the Commissioner" (R. 348). It is true, of course, as petitioners say, that there is no presentation of evidence upon an arraignment. But we do not agree with petitioners that the court's questions were deliberately calculated to prejudice them. It seems quite apparent that the court was confused by the witness' testimony that he never heard of the case again after his appearance before Judge Woodward. Immediately after this interrogation by the court, Stewart, Glasser's counsel, brought out from the witness the facts that the appearance was merely an arraignment, that not guilty pleas were entered, that the case was set for trial, and that there was no occasion for a trial and no trial that day (R. 349). We agree that the court fell into error here but we submit it was not prejudicial. The main fact in the Stony Island Avenue case was that it was stricken from the docket with leave to reinstate and that had been brought out in

in the interest of eliciting the truth and a full disclosure of all material facts, to interrogate both parties and witnesses (*United States v. Gross*,

the examination of Swanson (R. 231-232, 235-236). It is to be noted too that no objection was made to the court's questions, though it must have been apparent to counsel that the court misapprehended the nature of the defendants' appearance before Judge Woodward (R. 348). Neither was there any motion to strike out the court's examination after Stewart had brought out the facts (R. 351).

3. Morgan, chief clerk of the United States attorney's office, testified regarding the administrative procedures of the office and similar matters, and also testified concerning the contents of certain records (R. 186-196). Near the conclusion of his direct examination he stated that "From an examination of the Sidney Eckstone Grand Jury records I can tell there were twelve no-bills returned in cases in which Glasser represented the Government. Glasser presented twenty cases to the Eckstone Grand Jury." The court asked, "That is the total number of cases presented?" and the witness replied, "By Mr. Glasser." The court's next question was, "And of the twenty there were twelve No Bills?" to which the witness replied in the affirmative (R. 196). Glasser asserts that this was "rhetorical question" which was asked with an "air of disapproval" which cannot be reproduced "on the printed page" (Br. 43). It seems clear, however, that the questions were asked, not to disparage Glasser's record before that grand jury, but for the purpose of clarifying the witness's testimony. In any event, there is no basis for a claim of prejudice simply because the witness repeated his figures under questioning by the court.

4. Petitioners Roth (Br. 30-33) and Kretske (Br. 61-63) complain of the court's questioning of Edward Wroblewski regarding the circumstances under which he retained Roth. An examination of the record discloses, however, that this witness testified very fluently and had no difficulty in remembering even minor details until the prosecutor asked him, "How did you happen to hire Roth?" Wroblewski

103 F. (2d) 11, 13 (C. C. A. 7); *United States v. Breen*, 96 F. (2d) 782, 784 (C. C. A. 2), certiorari denied, 304 U. S. 585; *Hargrove v. United States*,

then became evasive. (R. 643-644.) It was at this point that the court conducted the examination complained of (R. 644-646). Certainly this attempt to elicit the truth was not improper.

5. Glasser asserts (Br. 47-49) that the court improperly interrupted the direct examination of defense witness Judge Igoe, formerly United States Attorney and Glasser's superior. The defense had endeavored to show through Judge Igoe that Exhibit 160, the Alcohol Tax Unit's report on the investigation of the Hodorowicz gang, was discussed between Glasser and Judge Igoe, and that the latter, after reviewing it, approved Glasser's decision to prosecute some of the persons named therein for substantive offenses under the alcohol tax laws rather than for conspiracy, as recommended in the report (R. 891-892). Judge Igoe testified that he had "seen Exhibit 160 before. This was brought to my office one day with an agent named Bailey, * * * and Glasser" (R. 891). Bailey, however, had previously testified that he had a conference with Judge Igoe and Glasser in January 1938 regarding the case the Alcohol Tax Unit was developing against the Hodorowicz gang and that he discussed the case with Glasser a number of times thereafter, and that his final report was not submitted to Glasser until April 1938 (R. 706-708). It was because of this previous testimony of Bailey that the trial court interrupted the examination of Judge Igoe to suggest that it was his impression that Bailey's report was not submitted to Glasser until "some time after Mr. Glasser and Mr. Bailey had consulted with Judge Igoe" and that "the Judge ought to have a chance to study this particular report to see when it was submitted." (R. 902.) To verify this impression the court asked Bailey, who was in the courtroom, whether he had the report with him at the time of his conference with Glasser and Judge Igoe (*ibid*). Bailey replied that he did not, that he had talked to Judge Igoe only once, on January 26, 1938,

25 F. (2d) 258, 259 (C. C. A. 8); *Kettenbach v. United States*, 202 Fed. 377, 385 (C. C. A. 9), certiorari denied, 229 U. S. 613; Wigmore, *Evidence* (3rd ed., 1940), sec. 748, and the extent

that the report was not completed at that time, and that it was submitted to Glasser on April 21 (R. 902-903). Judge Igoe then stated: "I don't recall it, the time he [Bailey] was there, but I did see this report finally, if there is any question about that." (R. 903.) He also testified that he was not in favor of handling the matter as a conspiracy case. (*Ibid.*) It is obvious from this review of the incident that the court was merely trying to refresh Judge Igoe's recollection and to reconcile his testimony with the earlier testimony of Bailey, a course considerably more tactful than a subsequent rebuttal of Judge Igoe's testimony would have been.

6. Objection is made to the court's statements regarding Abosketes' indictment and conviction in Wisconsin. But the record indicates that Glasser's counsel acquiesced in them, for he asked the court, "Have you the disposition [of the Abosketes indictments], your Honor?" and, after the court had replied, stated, "We will accept your Honor's credibility" (R. 1030). Furthermore, the information concerning Abosketes' previous conviction had been partially supplied in his own testimony (R. 663, 671). And in any event we do not perceive how they could have prejudiced petitioners, since they affected the credibility of Abosketes, a Government witness.

7. Petitioners also contend that the court committed prejudicial error by making certain statements while they were being cross-examined. (a) Roth complains (Br. 25-26) of the court's remarks, "Well, why don't you say so" (R. 877), "Well, just say so, then" (*ibid.*), and "He [Roth] has a lot of last answers" (R. 878). The record shows, however, that during cross-examination Roth had persisted in arguing with the prosecutor and in giving unresponsive answers; it is apparent that Roth's conduct had taxed the patience of the court (R. 862-878). Just prior to each of the statements complained of Roth had given an unresponsive or evasive answer to the question asked (R. 877, 878). With reference to the court's statement, "Mr. McGreal [one of the

of their participation in such interrogation is a matter within their sound discretion. *United States v. Kay*, 101 F. (2d) 270, 272 (C. C.

prosecutors] is not cross-examining a Judge" (R. 863), it need only be said that it may have been passed in jest and that, in any event, it was nothing more than a realistic reply to Roth's counsel's statement, "I noticed when they cross-examined the Judge they did not yell" (*ibid.*). The court's statement certainly may not be distorted into a disparagement of Roth. It is to be noted, too, that the court said he had observed McGreal's method of cross-examination and found it not improper (*ibid.*). Roth's interpretation of the court's statement regarding the record on appeal in the case of *United States v. About 151 Acres of Land, etc.*, is incorrect. The prosecutor's question was not, as Roth states, whether, in the trial of the libel action "Glasser would be required to disclose all the evidence the Government had in the criminal case, arising out of the still seizure" (Roth Br. 27), but whether Glasser did in that case disclose the evidence the Government had as a result of the seizure (R. 870). Roth twice evaded the question before the court made the statement of which he now complains (i. e., that since Roth examined the record on appeal he knew "just as much about it as if you were present in court"). The court's statement was, of course, true. Roth's argument that the effect of this statement was to leave the impression that Glasser withheld evidence and that Roth was endeavoring to protect him is specious.

(b) Glasser points (Br. 43-44) to the court's statement that he had the right to subpoena Ritter as a witness (R. 920-921) as prejudicial error. But just prior to this Glasser had voluntarily stated that Ritter "has been in Chicago * * * and he has not testified" (R. 920), thereby implying that it was incumbent upon the Government to call Ritter. When the court advised Glasser that Ritter was subject to subpoena, Glasser replied, "He is a government witness" (*ibid.*). In the circumstances it can scarcely be maintained that the court's advice to Glasser was improper

A. 2), certiorari denied, 306 U. S. 660. The judge "is not a mere moderator of a town meeting, submitting questions to the jury for determination,

or that it had the effect of destroying the weight of Glasser's previous testimony that he had stricken the Stony Island Avenue case from the docket at Ritter's request (R. 918-920). Even more untenable is Glasser's argument that he was entitled to a presumption that the testimony of Ritter, if produced, would have been unfavorable to the Government. We know of no such rule of law. The cases cited by Glasser (Br. 44), far from supporting his contention, are adverse authority.

Glasser complains (Br. 46) of the court's questions concerning whether, in his judgment, it would have been advisable to secure the release of certain convicted defendants in order to obtain from them testimony upon which Abosketes could have been convicted (R. 1022). This occurred during cross-examination while the prosecutor was questioning Glasser regarding his efforts to secure commutations of the sentences of the defendants (R. 1021-1022). Glasser had endeavored to show that he made strenuous efforts to secure evidence against Abosketes (R. 936-942), and the court's questions related to those efforts. Glasser's answer was that "It was the judgment of myself, Judge Igoe, and Mr. Herrick" (R. 1022). In these circumstances we do not think it can be said that the question was either improper or prejudicial. If anything, the question and Glasser's answer had the effect of simply reiterating his prior explanation of his conduct in the Abosketes matter.

Glasser's contention (Br. 52-54) that the court acted improperly in questioning him regarding his presentation of the Chrysler sedan case before Judge Barnes is likewise not well taken. That case was tried on the Alcohol Tax Unit's condensed report of the seizure of the car (R. 717; Ex. 36), (the car seizure report, exhibit 36, is to be found in exhibit 229, the file envelope in the Chrysler sedan case), but Glasser admitted on cross-examination (R. 997-999) that prior to the trial before Judge Barnes he had received three reports from the Alcohol Tax Unit implicating Leo Vitale, the

nor simply ruling on the admissibility of testimony, but one who in our jurisprudence stands charged with full responsibility. He has the same

husband of the claimant, in the operation of as many stills. One of these was the report (dated September 2, 1936) in the Meyers farm case, in which Vitale had been sentenced to one hour on the recommendation of Glasser in July 1938, only six months before the trial of the Chrysler sedan case (R. 250-251, 915-916). It appears that Glasser had these reports, to be found in exhibit 210, in his hands at the time he was questioned about the Chrysler sedan case by the prosecutor and the court (R. 997-1000). His last statement before the court asked the questions of which he complains, was, "I had a report. I did not tell Judge Barnes a word about Leo Vitale before he disposed of this libel case because it does not belong in a libel case" (R. 1009). In his examination the court simply sought to ascertain Glasser's reasons for not bringing to Judge Barnes' attention the information he had of Leo Vitale's bootlegging activities (*ibid.*). Nor was the court's question as to whether a given set of facts made out a case for forfeiture (R. 1001-1002) a "hypothetical question based on facts utterly without foundation in the record," as Glasser asserts (Br. 53). The car was found in a garage located only a foot or two from Vitale's home, in which the still was seized, there were marks made by cans in the floor of the trunk (R. 717; Ex. 36), and investigator Dowd had previously testified that the car was used to haul sugar from a warehouse to Vitale's home, for hauling Vitale's associates, and for trailing carloads of alcohol (R. 219). Exhibit 36, the car seizure report, also states that "the car had been used, and in furtherance of a scheme to defraud the Government of the tax imposed on distilled spirits." In addition in exhibit 210 there is a report by Dowd and other investigators, dated October 30, 1937, concerning the seizure of a still in Vitale's home earlier in that month. That report states that license plates were transferred from "a Chrysler sedan to a Plymouth coupe." It also states that "There was found in a compartment of a Chrysler sedan * * * a yellow slip of paper having thereon notations of cane sugar and yeast

opportunity that jurors have for seeing the witnesses, for noting all those matters in a trial not capable of record * * *." *Patton v. Texas &*

and cans, and a list of amounts." Exhibit 210 also contains another report by Dowd and others, dated August 31, 1938, regarding the seizure of *another* still in Vitale's home on August 21, the date the car was seized. This report states the same facts about the car as are contained in exhibit 36, and, in addition, that Vitale had been seen using the car, that sugar sacks were found in it, and that there was an odor of alcohol in the trunk. (It is true that exhibit 36, the car seizure report, does not state that any person had seen the car being used in violations of the alcohol tax laws, but it is not true, as Glasser says (Br. 52, note 15), that that report refutes Dowd's testimony that the car had been used in such violations (R. 219) and that such evidence was in his report (R. 224). Exhibit 36 is signed by investigator O'Hara and Dowd testified that his assistant seized the car (R. 222). Dowd further stated that he "wrote a report on that case," referring to the August 21, 1938, seizure (*ibid.*). It is therefore obvious that Dowd was referring, not to exhibit 36, but to the report of August 31, 1938, contained in exhibit 210.) It appears that the court had exhibit 210 at the time he asked the question of which Glasser complains, for Glasser said, "You are showing me a criminal file, and not a civil file, that is not fair" (R. 1002). It also appears that Glasser had, just before this occurred, examined the reports (R. 997-1000). Moreover, there was no objection to the court's question. In these circumstances it cannot be said that the question did not fairly state facts which were known to Glasser. Glasser's further assertion (Br. 54) that the so-called criminal file, around which the questioning of Glasser revolved, was not offered in evidence is unwarranted. The file referred to is the file in the Meyers farm case—*United States v. Leo Vitale et al.*—and it contains the Alcohol Tax Unit's report on that case, reports on the stills seized at Vitale's home in October 1937 and August 1938, and a report on a still seized near Lowell, Illinois, in 1935, as well as other materials. This entire file was introduced as exhibit 210 and it is on file here.

Pacific Ry. Co., 179 U. S. 658, 660. Nor is he a "mere automatic oracle of the law, but a living participant in the trial" (*Rudd v. United States*,

And it was made available to Glasser during his cross-examination (R. 996-999).

8. Roth and Kretske contend that the trial court improperly limited the right of cross-examination. They complain of the court's action in sustaining the prosecutor's objections to the cross-examiner's question to the witness Swanson, "Well, he [Bailey] could get that case [in Cleveland] called, or have something to do with it?" (R. 237), and the questions to Dewes as to whether he was confined in a penitentiary or a reformatory (R. 555). These questions were manifestly improper and there is no merit in the claim that petitioners were prejudiced by the court's statements that "Mr. Bailey is not running the courts down in Cleveland" (R. 237), and that the institutions at Leavenworth, Kansas, and Milan, Michigan, where Dewes was confined prior to the trial, are "both Federal Penitentiaries" (R. 555).

Petitioners complain, too, of the court's ruling that Glasser's counsel was limited, in cross-examining rebuttal witness William Campbell, formerly United States attorney and Glasser's superior, to the scope of Campbell's direct examination. Campbell simply denied that on the day Glasser appeared before the grand jury which returned the indictment in this case he stated to Glasser that he wanted "to tell that grand jury there was nothing in your official conduct which would require grand jury investigation" (R. 1041). Glasser had previously quoted Campbell as having made that statement to him (R. 945). The ruling was in accord with the established rule of practice in the federal courts. *Wills v. Russell*, 100 U. S. 621, 625; *Houghton v. Jones*, 1 Wall. 702, 706; *Philadelphia and Trenton R. Co. v. Stimpson*, 14 Pet. 448, 460. And the scope and extent of cross-examination is within the discretion of the trial judge (*District of Columbia v. Clawans*, 300 U. S. 617, 632; *Alford v. United States*, 282 U. S. 687, 694; *Blitz v. United States*, 153 U. S. 308, 312), and not subject to review in the absence of abuse. Cf. *Rea v. Missouri*, 17 Wall. 532, 542.

173 Fed. 912, 914 (C. C. A. 8)), and he "has a right to aid in eliciting the truth." *Fritts v. United States*, 80 F. (2d) 644, 646 (C. C. A. 10).
 " * * * it is his duty, to see that the facts of the case are brought intelligibly to the attention of the jury, and to what extent he will intervene for this end is a matter of discretion." *New York Transportation Co. v. Garside*, 157 Fed. 521, 524 (C. C. A. 2); see also *Morrissey v. United States*, 67 F. (2d) 267 (C. C. A. 9), certiorari denied, 293 U. S. 566. He has the right and it is his duty, if he feels the need of information, to examine in the way best calculated to produce a full disclosure of all the facts. Wigmore, *Evidence* (3d ed., 1940), sec. 784.

Especially in view of the fact that petitioners made no objections to the questions and statements of which they now complain, the language in *United States v. Breen*, 96 F. (2d) 782, 784 (C. C. A. 2), certiorari denied, 304 U. S. 585, is particularly apt here: "All too often, it seems, appellants like these become overcritical of a trial judge after conviction and on appeal seek to try him instead of the merits or demerits of their cause."

The court below, with reference to petitioners' criticisms of the trial court, said that "we have examined every criticism made, considered them in connection with the entire record, and are satisfied that the complaints are of minor importance.

They did not affect the substantial rights of the appellants, nor prevent the jury from exercising an impartial judgment on the merits" (R. 1138). We submit that the court was correct and that petitioners' claim of reversible error should be rejected.

IX

PETITIONERS WERE NOT DEPRIVED OF A FAIR TRIAL
BY REASON OF ANY PREJUDICIAL CONDUCT OF THE
PROSECUTING ATTORNEY

Petitioners contend (Glasser Br. 54-72; Roth Br. 40-50; Kretske Br. 73-82) that the prosecutor was guilty of prejudicial misconduct and that as a result they were deprived of their right to a fair and impartial trial. Examination of the grounds of their complaint shows, however, that it is without merit.

1. Petitioners claim that the prosecutor propounded many leading questions and thereby assumed the role of a witness (Glasser Br. 60-63; Roth Br. 48-49; Kretske Br. 75-81). Record references of a number of instances are cited in petitioners' briefs (R. 206, 226-227, 229-231, 244-245, 289, 296, 301, 303-306, 380, 573, 589, 604, 612-613, 636, 659-660, 673, 674-675, 703).¹ In about one-half of them no objections were interposed (R. 230, 289, 296, 301, 303-306, 612-613, 636,

¹ Some of these are quoted in Kretske's brief (pp. 75-81).

673, 674-675);² in one an objection was sustained (R. 245). In each instance where objection was made (R. 206, 227, 229, 231, 244, 380, 573, 589, 604, 659-660, 703) the question was permissible in order to refresh the witness's recollection (R. 206, 227, 229, 231, 573, 589, 604, 659-660, 703) or to clarify his testimony (R. 244, 380, 589).³

The trial court is, of course, permitted a broad discretion concerning the allowance of leading questions. Appellate courts view with disfavor objections based merely upon the form of questions because so much depends upon the particular circumstances involved in each case (such as the demeanor of the witness and the tenor of the preceding questions and answers) that it is virtually impossible to appraise the propriety of each instance. Wigmore, *Evidence* (3rd ed., 1940),

² In a few of the instances cited objections were made on other grounds (R. 226, 304, 306, 612, 613).

³ In his brief (pp. 60-62) Glasser singles out the questioning of Swanson (R. 230) and argues that the prosecutor's question was the only "testimony" tending to connect him with the "fixing" of the Stony Island Avenue still case. But the record shows that the questions were propounded to refresh Swanson's recollection and that there was no objection to them (R. 230-231). Glasser's argument completely ignores the evidence that \$500 was paid to Kretske to "fix" that case, that Glasser struck the case from the docket, and that the defendants were not thereafter brought to trial on the indictment (R. 229, 232, 244, 275-276, 297-298, 346).

sec. 770. In this case we think it is clear that the questioning did not exceed the limits of propriety.

2. Petitioners contend (Glasser Br. 66-69; Kretske Br. 75) that the prosecutor put specious questions and that they were prejudiced thereby. The few instances cited from this voluminous record do not support the contention.

Thus, Glasser and Kretske urge the impropriety of the prosecutor's asking the witness Workman whether Glasser ever called him to his office after he had been placed on probation (R. 209). This occurred during redirect examination after Stewart, Glasser's counsel, had elicited on cross-examination that the witness had talked to officials of the Alcohol Tax Unit. Stewart implied in his questions that these officials seemed not to be interested in any information the witness could supply about a certain still (R. 208). In these circumstances it cannot be said that the prosecutor's question was improper, and much less that it was prejudicial.

Petitioners complain, too, of the prosecutor's question to Commissioner Walker, "It does not mean that there may not be probable cause but that it was not shown to you?" (R. 289). There was no objection to the question, which was designed simply to clarify the Commissioner's statement that his record showed that he had discharged a defendant on the ground that probable cause was not shown (*ibid.*).

The questions to Judge Woodward, a defense witness, whether his knowledge of a certain case which had been tried before him and of the records of the defendants was based upon what he had heard in court (R. 739, 741), were obviously legitimate cross-examination, since Stewart had, on direct examination, interrogated the Judge concerning Glasser's conduct in the trial of that and other cases (R. 737-739). Here again there were no objections to the allegedly offensive questions (R. 739, 741).

Judge Igoe, formerly United States Attorney and Glasser's superior, testified as a witness for the defense (R. 890-905). He stated that Glasser had conferred with him regarding certain cases and that Glasser had frequently reported his actions in those cases (R. 890-895, 897-899, 903). The obvious purpose of the direct examination was to show that Glasser's actions ~~had the~~ approval of his superior. On cross-examination the prosecutor sought to show that Judge Igoe did not know of many of the bootleggers involved in the cases and it appears from the record that Judge Igoe was offended by the questions (R. 907-908). When the Judge said, "I am telling you I don't know him," the prosecutor stated, "That is the point. I say you don't know them, but Mr. Glasser does know them" (R. 908). The situation thus presented was a delicate one and the trial court diplomatically, we submit, intervened to

correct it. After the prosecutor had apologized to Judge Igoe the court admonished him to be careful in framing his questions (*ibid.*). In the confusion a motion by Stewart to strike the prosecutor's statement was apparently forgotten and Stewart did not renew it (*ibid.*). Petitioners claim that this statement prejudiced them. We concede that it was improper but in the light of the circumstances under which it was uttered we do not think it was of such a serious nature as to constitute reversible error. Incidents of similar character often arise in the trial of hotly contested cases such as this and though they may have little or no significance in the trial they take on an exaggerated importance when set forth in a printed record and emphasized by counsel on appeal.⁴ Cf. *Goldstein v. United States*, 63 F. (2d) 609, 613 (C. C. A. 8).

⁴ Glasser also objects to the prosecutor's questions to Judge Igoe whether he knew that Glasser was acquainted with a man known as Sheenie Albert, and that Glasser had met Albert on Polk Street in Chicago. Stewart objected to the question on the ground that "that never happened," and the court replied that "There is testimony here in the record to that effect." After further discussion the prosecutor withdrew the question. Judge Igoe, however, asked for and was granted permission to answer, and he replied, "Of course, Glasser never told me any such thing, and you know it" (R. 909). Glasser says that by this question the prosecutor "sought to supply evidence which he had previously sought and failed to obtain" (Br. 68). But there was, as the court stated, a factual basis for the prosecutor's question, and it was therefore legitimate cross-examination. Paul Svec had

Petitioner Roth complains (Br. 44-47) of the prosecutor's questioning of the witness Dukatt regarding his and Roth's examination of some document (R. 701-702). There was no objection to the questions and, in any event, the contention that they were unfair and prejudicial is not well founded. In an attempt to ascertain the identity of the document the prosecutor handed Dukatt the report on the investigation in the case in which Dukatt was involved. Dukatt was unable to identify it as the document he and Roth examined. His last statement in this sequence was, "Well, to be honest with you, I don't just remember, I don't know if it was this size of paper or larger, I don't remember, because I really didn't pay much attention at that time" (R. 702-703). Obviously, there could have been no inference from this that the document in question was a secret report, as Roth contends.⁵

previously testified that on two occasions in 1937 he observed Glasser drive past a barber shop on Polk Street and sound the horn of his car, and that Albert thereupon left the shop (R. 563). Glasser's statement (Br. 68) that Svec's testimony had been stricken is not correct. Only Svec's statement that Albert said, on one of the occasions referred to, "That is Red; I guess I have to go see him," was stricken (R. 563, 569).

⁵ Roth's statement that he and Dukatt "called at the clerk's office to examine the indictment" (Br. 44) is based upon his own later testimony (R. 861).

Roth's further objection that the prosecutor asked him a "legal question" on cross-examination and that the purpose of the question was to raise the inference that "Glasser had

3. Petitioner Glasser urges (Br. 63-66) that there was impropriety in the prosecutor's action in reading to the jury the testimony which Joe Cole had given before the May 1938 grand jury in the Spring Grove case.* The argument is based upon the erroneous premise that there was other testimony by Cole, not contained in exhibit 96, the transcript from which the prosecutor read, and that this alleged additional testimony was not presented to the jury at the trial below. Glasser does not claim that the prosecutor did not read all of the testimony of Cole contained in the tran-

failed to perform his duty" (Br. 42), beside being unavailable to him, is a distortion of the incident. Roth himself voluntarily offered the suggestion that "He [Glasser] would have a right to amend the pleading" (R. 883-884).

Equally untenable are Roth's objections (Br. 41-42) to the recross-examination on the Chrysler sedan case and to the change in cross-examiners. These were matters within the discretion of the trial court. Cf. *United States v. Manton*, 107 F. (2d) 834, 845 (C. C. A. 2), certiorari denied, 309 U. S. 664.

With reference to Roth's assertion that the prosecutor misinformed the court that the Chrysler sedan case was mentioned in the bill of particulars, it need only be said that a case against Leo Vitale, the husband of the claimant of the car, is listed in the bill (R. 81-82) and that the order of the court requiring the Government to file a bill of particulars stipulated that the Government's proof was not to be limited to the matters set forth in the bill if it appeared that the proof should not be so limited (R. 77).

* This was the third time the Spring Grove case was presented. On the two previous occasions, in August and October 1937, Glasser withdrew the case (R. 528, 530-531).

script.⁷ Neither does he claim that the transcript shows that Cole was questioned as to the merits of the Spring Grove case. He evades a definite commitment on these two important facts with the statement that the "testimony by Cole therein contained and read by the prosecutor relates exclusively to his illness" (Br. 63), and attempts to show, by citations of oral testimony at the trial below (R. 576, 606, 607-608), that there was in fact other testimony by Cole which was not included in the transcript.

Exhibit 96 refutes Glasser's contention. It was identified by Morgan, chief clerk of the United States attorney's office (R. 186), as "the transcript of testimony taken before the grand jury on May 17, 1938" (R. 529).⁸ The document itself shows on its face that, with the exception of the statement of investigator Sylvan R. White to the grand jury (see R. 531), which is not transcribed therein, it is a complete transcript of *all* the testimony of *all* the witnesses called before the jury in

⁷ The testimony read by the prosecutor does not appear in the bill of exceptions. Prior to his reading of the testimony the prosecutor stated, "I ask leave at this time to read his [Cole's] testimony before the May 1938 Grand Jury." Following this there is the notation, "Mr. Ward: (Reading testimony of Joe Cole before the May 1938 Grand Jury)" (R. 574).

⁸ Glasser asserts that the transcript was not properly authenticated as to its accuracy and completeness (Br. 63, n. 30). There was no objection on this ground at the time the prosecutor read from it or at any other time (see R. 529, 574).

the case entitled *United States v. Louis Kaplan et al.* (the Spring Grove case).⁹

4. Petitioners say that the prosecutor wrongfully, and with prejudicial effect, deprived Glasser of access to certain files of the United States attorney's office during a week-end recess.¹⁰

During cross-examination the prosecutor questioned Glasser regarding some of the cases involved in the conspiracy (R. 954-1027). After some cross-examination the prosecutor offered in open court to give Glasser access to any file he desired to examine. Glasser stated that he appreciated the offer and that he would like to take advantage of it the following day (Saturday); the court then adjourned until the following Monday. The court stated to Glasser that he might

⁹ Further, exhibit 95, the minutes of the May 1938 grand jury, shows that this case was presented on May 17, that the Alcohol Tax Unit investigator in the case was Sylvan R. White, that the witnesses who appeared were E. Simonsen, W. Blackmon, J. Fernandez, Louis Pregonzer, R. W. Nessler, Grace Hollinger, H. D. C. Bannister, A. Schmeltzer, Cecil Simms, Joe Cole, and Sylvan R. White, and that on the same date—May 17—the jury voted a no-bill as to Kaplan, Raubunas, and Dewes, and a true bill against Slesur, Cole, Rankin, Pregonzer, and Boguch (see also R. 528-529). With the exception of investigator White the testimony of all the witnesses named in exhibit 95 appears in exhibit 96. And, contrary to the implication in Glasser's brief (p. 63), the two exhibits show that the case was presented at one session on May 17.

¹⁰ Roth and Kretske do not have any standing to raise this point.

have access to the files over the week end. (R. 979-980.)¹¹ On Monday Glasser informed the court that he had gone to the United States Attorney's office on Saturday morning and was refused access to the files. The prosecutor explained that Glasser came along to the office and that he suggested that Glasser get his attorney. This Glasser refused to do and the prosecutor advised him that he could not examine the files alone. Glasser did not deny that the prosecutor's explanation was accurate, and the court then stated that "They simply told you to get your lawyer, and you didn't get your lawyer, so the responsibility is not upon them. Show him the reports now." (R. 982-983.) In the circumstances, although the prosecutor seems to have taken an impolite and unfriendly position, it seems evident that these facts do not show prejudicial refusal to allow Glasser to inspect the files. The record shows, too, that he was not placed at a disadvantage in his cross-examination, for files and reports were handed to him from time to time as the prosecutor questioned him regarding various cases (see, e. g., R. 983, 996-999, 1006, 1008).¹²

¹¹ This colloquy would seem to refute Glasser's assertion (Br. 55) that the files referred to had already been introduced in evidence. Glasser does not claim that he did not have access to exhibits; the record indicates the contrary (see, e. g., R. 970, 971-972, 973-978). There is nothing to show that the files the prosecutor offered to permit Glasser to examine had been introduced.

¹² It should be noted that the bill of particulars, filed December 28, 1939 (R. 77), gave Glasser ample notice of

5. Petitioners Glasser (Br. 69-72) and Roth (Br. 48) assert that the prosecutor "surreptitiously," and with prejudicial effect, caused a pre-trial statement of the witness Raubunas (Ex. 92), to be submitted to the jury. The contention is not well taken.

During his cross-examination of Raubunas, Stewart, Glasser's counsel, asked for and obtained from the prosecutor the statement in question. This statement is dated October 20, 1939 (R. 482). Shortly thereafter, Stewart received from the prosecutor another statement made by Raubunas on July 27, 1939 (R. 483; see also R. 485). In cross-examining Raubunas, Stewart read substantial portions of the July 27 statement (R. 486-490), which was admitted in evidence as defense exhibit 84 (R. 1034). Stewart also elicited from Raubunas testimony that he later signed the longer statement of October 20, but did not question him regarding its contents (R. 482, 492, 493, 513-514). On redirect examination Raubunas identified exhibit 92 as his statement of October 20 (R. 518). The October 20 statement was then offered by the Government and the defendants' objection to the

the cases involved in the conspiracy charged in the indictment, that in the interim before trial Glasser, on his own admission, had not requested permission to examine the United States Attorney's files in any of the cases mentioned in the bill (R. 980), and that in the summer of 1939, before the indictment in this case was returned, Glasser called at the United States Attorney's office at the latter's request and that at that time Glasser and the prosecutor went over the files in some of those cases (R. 986-987).

offer was sustained (R. 712). At page 1034, there is a notation that, at the close of the defendants' case, some 35 exhibits, both Government and defense, were "offered and received in evidence." These exhibits are listed by number and the number "92" is included in the list. It is upon this latter notation that petitioners rely to support the contention that exhibit 92 was "surreptitiously" submitted to the jury.

The certificate to exhibits of the clerk of the district court states that he received from the United States attorney "the following exhibits which were introduced in the case * * *" (R. 1075).¹³ Exhibit 92 is not included in the list (see R. 1080).

The court below, referring to the notation that a number of exhibits, including exhibit 92, were introduced without objection at the close of the defendants' case and to the fact that the clerk's certificate to exhibits did not include exhibit 92, concluded that "From the record thus appearing we are unable to say that these exhibits [92 and 115] were sent to the jury" (R. 1132). In view of the ambiguity of the record, we think the court below was correct. Certainly this serious charge of misconduct on the part of the prosecutor may not be supported on so tenuous a showing as that made by petitioners.

But even assuming that, because of inadvertence, exhibit 92 went to the jury, petitioners are in no

¹³ This statement is preceded by the statement, to which Glasser refers (Br. 70), that "I herewith transmit * * * certain original exhibits * * *" (R. 1075).

better position. Stewart, not the prosecutor, injected the matter into the trial. It was an act of courtesy on the part of the prosecutor to give Stewart the pre-trial statements of a Government witness. Stewart used the statements as a means of attacking the credibility of Raubunas (R. 486-493, 513-514), but offered only the first (Ex. 84) in evidence. In these circumstances petitioners have little standing to complain if Raubunas' second statement (Ex. 92) did in fact reach the jury."

Moreover, in his questioning of Raubunas regarding the two statements, Stewart clearly conveyed to the jury the impression that the second one corresponded with Raubunas' testimony on direct examination, while he showed that Raubunas' first statement did not contain some of the facts to which he testified (R. 490, 492-493, 513-514). Raubunas' first statement, was sent to the jury as defense exhibit 84. Thus, even if exhibit 92, which, it is conceded, is merely corroborative of Raubunas' testimony, did go to the jury it would hardly have prejudiced petitioners."

"Indeed, it appears that at one point the court ruled that, in the circumstances, exhibit 92 was admissible, and that Stewart tacitly agreed (R. 519-520).

"What we have said regarding Raubunas' written statements applies alike to the two statements of the witness Dewes (Exs. 114, 115). The situations are almost parallel and we therefore do not think it necessary to discuss the latter (see R. 551, 552-554). Petitioner Glasser's ingenious argument (Br. 70-71) that the Government is "on the horns of a dilemma" regarding exhibits 92 and 115 is beside the point. Glasser does not mention Dewes' first statement (Ex. 114) which, the record shows, was admitted as a defense

6. Petitioner Glasser asserts (Br. 55-57) that the Government was responsible for the loss of certain of his exhibits.¹⁶

It is clear, and Glasser concedes, that the prosecutor took the exhibits after the trial with the consent at least of petitioner Roth (see R. 1094, 1096). And, apparently, there was no objection either at the time or thereafter to the prosecutor's retaining the exhibits.¹⁷ Further, the United States Attor-

exhibit (R. 551). Dewes' second statement (Ex. 115) was offered by the Government but the defendants' objection to its admission was sustained (R. 712). Here again there is an ambiguity in the record, for the clerk's certificate to exhibits lists exhibit 115, as well as exhibit 114 (R. 1081-1082). It does not otherwise appear that exhibit 115 was actually received. Thus, as the court below said (R. 1132), it cannot be determined upon the entries in the record that exhibit 115 was sent to the jury. In passing it may be noted that with respect to this exhibit petitioners do not charge any misconduct on the part of the prosecutor.

¹⁶ While Glasser says that four such exhibits were lost his contention of prejudice in the court below and here is confined to exhibits 205 and 206. The first was a memorandum from Glasser to his superior entitled "Memorandum for Mr. Campbell concerning No-Bills Returned," and the second a copy of a letter from Glasser to former United States Attorney Igoe, apparently reporting the disposition of a case (R. 952).

¹⁷ It is to be noted that in their petition in the circuit court of appeals for an order on the United States Attorney to produce missing exhibits petitioners alleged that on July 31, 1940, assistant United States attorney McGreal advised the clerk of that court that he was waiting to receive copies of certain exhibits which he had requested from Glasser (R. 1095). Glasser's assertion (Br. 57) that this "tends to confirm that [McGreal] had earlier discovered his loss of the originals of these exhibits" is wholly unwarranted.

ney's additional answer to petitioners' petition in the circuit court of appeals to require him to produce certain allegedly missing exhibits (R. 1094-1095) states that exhibits 182, 198, 205, 206, and 208 were defense exhibits "which did not come into the possession of the United States attorney at the time of the trial or thereafter and are not now in possession of the United States attorney or any of his assistants", and that the original stenographic transcript of the testimony did not show that exhibits 205, 206, and 208 "were offered and received in evidence, although this notation is made in the Bill of Exceptions heretofore filed" (R. 1100-1101; compare R. 952, 953). Glasser can point to nothing in the record which disproves these statements of the United States attorney. It is thus apparent that the mere fact that some of his exhibits were missing hardly supports the contention that it was the fault of the Government.

7. Petitioner Glasser contends (Br. 57-60) that a post-trial notation appearing on exhibit 130 prejudiced his appeal.¹⁸

The exhibit is an ordinary file envelope. At the top appears the full caption of the case of *United States v. Louis Caplan* (sic) *et al.* Beneath the caption there is the notation, "Indictment filed May 19, 1939," which, of course, was entered sev-

¹⁸ This contention relates, of course, not to the issue whether Glasser had a fair trial, but rather to the issue whether he had a fair hearing on appeal.

eral months before the indictment in the case at bar was returned (see R. 2). The notations referred to by Glasser, the first of which is dated April 30, 1940, appear next. The verdict of the jury in the instant case was rendered on March 8, 1940 (R. 101, 1045), and Glasser and the other defendants were sentenced on April 23 (R. 104-105, 1059-1060). Thus, the notation of which Glasser complains—"4-30-1940—Caplan—Pleads Guilty—14 months to run concurrently with 31825 [the instant case; R. 38]. * * *"—did not appear on the envelope at the time the sentences were pronounced. Glasser connects that notation with his remark to the trial court before he was sentenced ("Nobody was ever indicted and convicted that I no-billed" (R. 1064)) and argues that the prosecutor entered the notation with a deliberate purpose to prejudice him before the circuit court of appeals and that he was so prejudiced.

The argument is specious. It is a reflection upon the intelligence and judicial integrity of the court below. The court could not have failed to notice that the notation (which, in any event, reflected a fact of public record) was entered long after the close of the trial." Moreover, it was brought out by oral testimony at the trial that the

¹⁹ We concede that it was not proper for the prosecutor to enter official notations on a document which was in evidence. But we do not think that this supports petitioner Glasser's accusation of a deliberate purpose to distort the record in order to prejudice his appeal.

Spring Grove case was presented anew after Glasser had resigned and that this presentation resulted in the indictment of Kaplan, Raubunas, and Dewes, as well as the reindictment of the other defendants named in exhibit 130 (R. 489, 517-518, 550, 571-574, 713-714, 820).²⁰

CONCLUSION

Petitioners had a fair trial and the convictions of petitioners Glasser and Roth were supported by the evidence. For these and the other reasons stated the judgment of the court below should be affirmed.

Respectfully submitted.

✓ CHARLES FAHY,
Acting Solicitor General.

✓ WENDELL BERGE,
Assistant Attorney General.

✓ EDWIN D. DICKINSON,
Special Assistant to the Attorney General.

ROBERT S. ERDAHL,
RICHARD S. SALANT,
HENRY J. FOX,
MELVA GRANEY,

Attorneys.

OCTOBER 1941.

²⁰ Curiously, Glasser points to the very notation which he complains prejudiced him in the court below to support a thinly veiled implication that Government witnesses Raubunas and Dewes perjured themselves (Br. 60, n. 23).

APPENDIX

THE EVIDENCE RELATING TO THE SPECIFIC CASES AND INCIDENTS

The Hodorowicz brothers cases

The 119th Street still.—This still was operated by Elmer Swanson and Christ Del Rocco, two members of the Hodorowicz ring (R. 225, 242). Victor Joppek attended the still (R. 228, 247). A fire in October 1936, led to its discovery and seizure (R. 239, 249). Swanson testified that Joppek was picked up and taken to the United States Attorney's office and that Swanson talked to Joppek upon the latter's release (R. 228). Swanson and Del Rocco then consulted Horton, one of the defendants below. Horton told them that he had heard at the Federal Building that they were in trouble, that they were going to be arrested and indicted unless they did something about it, and that for \$500 he would "take care" of the case. Del Rocco paid Horton that sum and Horton said he would take it down town and give it to "the boss." The boss, he said, was "Red."¹ (R. 225-227, 228, 239, 242-243.) In February 1937 special investigators Goddard and Smallwood of the Alcohol Tax Unit took Joppek to the United States

¹ It is undisputed that "Red" refers to Glasser (R. 230, 297, 301, 1123).

Attorney's office where they saw Glasser and Kretske. The investigators had started to explain that Joppek was identified with the 119th Street still, when Kretske interrupted and remarked, "Yes, yes, we know all about it." Goddard told them Joppek had signed the lease for the premises and that he admitted that he had paid the rent. Glasser said they did not "arrest a man for that" and released Joppek with instructions to return a week later (R. 249-250).

Swanson, Del Rocco, and Joppek were not prosecuted in connection with this still (R. 226, 228, 243-244).

Glasser's only explanation of this case was that it was his customary practice not to prosecute the minor figures involved in violations, but rather to attempt to ascertain through them the identity of the owners of the stills (R. 932, 964-965). The record does not show that Glasser thereafter, in accordance with what he testified to be his customary practice, made any effort to determine through Joppek who were the owners of the still.

The Peter Hodorowicz-Walter Hort case.—On January 12, 1937, Peter Hodorowicz and Walter Hort were arrested immediately after making a sale of illicit alcohol to Patrick Donahue, an Alcohol Tax Unit investigator. Donahue had arranged the purchase with Peter Hodorowicz in Frank Hodorowicz' hardware store (R. 254-255, 265-266, 357-361). After preliminary hearing, the Commissioner held Peter Hodorowicz and Hort over to the district court, and they were released under bond (R. 255-257, 265-267, 287, 298-299, 338, 362-363).

Frank Hodorowicz testified that he asked one Frank Miller, a bootlegger, if he could do anything about this case. Miller investigated and reported back to Hodorowicz that he could "take care" of it for \$800. Hodorowicz paid Miller and Miller told him the case would be "dragged along." (R. 307-308, 309.)

Glasser presented this case to the June 1937 grand jury and on June 24 the jury voted a true bill. On July 1, at Glasser's request, the case was withdrawn and passed to the next grand jury. Glasser never presented the case to any later grand jury and, consequently, Peter Hodorowicz and Hort were never prosecuted for this violation. (R. 257, 267, 365, 705.)

Glasser testified that he withdrew this case from the grand jury, after it had voted a true bill, at the request of investigator Smallwood, who, he said, told him that the Alcohol Tax Unit wanted to use the case as part of a larger case against the whole Hodorowicz crowd (R. 948-949). Smallwood had died prior to the trial below (R. 958). Ritter, the investigator in charge of the agents at the local Alcohol Tax Unit office and the official with whom Glasser himself testified he had most of his contacts (R. 918), was not called.

The Walter Hort case.—Later in January 1937 Walter Hort was arrested while driving a car which contained illicit alcohol (R. 267-268). Frank Hodorowicz testified that after Hort's arrest he again consulted Miller and paid him \$500 to "take care" of this case (R. 308-309). On

January 28 the matter came before the Commissioner on a petition to suppress evidence (R. 287). Kretske appeared for the Government, and Hort was discharged (R. 268, 287, 309-310).² Frank Hodorowicz testified that he did not know, and Miller did not tell him, how Miller accomplished the results he promised in the Peter Hodorowicz-Hort and Hort cases (R. 310).³

Glasser did not advert to this case in his testimony.

The Zarrattini case.—Albina Zarrattini was apprehended in April or May 1937 with illicit alcohol in her possession. Frank Hodorowicz testified that she asked him if he could “take care” of the case.⁴ Hodorowicz consulted Kretske, who told him “we” might be able to take care of it. Later Kretske told Hodorowicz it would cost \$600. Hodorowicz collected that amount from Zarrattini and returned to Kretske’s office. Kretske told Hodorowicz he had talked to “Red”, that Zarrattini had seen “Red” and he had offered her probation but she would not accept it, that Zarrattini talked too much, and that therefore, he, Kretske, could not take care of the

² The record does not disclose what evidence was adduced at the Commission’s hearing.

³ Miller disappeared before the trial of this case (R. 337).

⁴ When he was first questioned regarding this matter, Hodorowicz said he “guessed” Albina Zarrattini came to him after her arrest and that he talked to Kretske about her case, but could not remember his conversation with Kretske (R. 296). The prosecutor returned to this subject later in his examination of Hodorowicz (R. 304).

case. Hodorowicz then returned the money to Zarrattini. (R. 304-307.)

Glasser testified that he did not remember Zarrattini or her case and denied that he ever said she "talked too much" (R. 950, 957). On cross-examination he said he "may have had a talk with her in this building where she wanted probation", but he could not recall it. When shown the file in the Zarrattini case he acknowledged that it was marked closed (R. 1008).⁵

The Clem Dowiat case.—On June 29, 1937, while hauling illicit alcohol, Clem Dowiat, a nephew of the Hodorowicz brothers, was arrested by investigators Annis and Kral of the Alcohol Tax Unit (R. 269, 355). The investigators had observed Dowiat pick up the cans in a garage where a still was later discovered and had followed him (R. 355-356). Annis discussed the case with Glasser on June 30, the day after the arrest (R. 356).

The case came before the Commissioner on July 9; Glasser appeared for the Government. Dowiat waived preliminary examination and was held over to the district court (R. 287, 356). Glasser presented this case to the grand jury on October 6, 1937. Annis appeared before the jury and testified regarding his surveillance and arrest of Dowiat (R. 356-357). Though it was a clear violation, the grand jury returned a no-bill (R. 705; Ex. 94). Glasser never discussed the case with Annis after the latter's appearance before the grand jury (R. 357).

Glasser offered no explanation of this case.

⁵ Exhibit 211A (R. 1008), the file in the Zarrattini case, shows that she was found not guilty on an indictment returned in September 1937.

The 118th Place still.—On September 1, 1937, investigators of the Alcohol Tax Unit seized a still in a garage at 124 East 118th Place. The investigators had gone to the vicinity to execute a search warrant for the premises at 128 East 118th Place; upon their arrival they detected the odor of alcohol and fermenting mash emanating from the garage at number 124 and upon investigation saw a number of five-gallon cans in the garage. Although without a search warrant for number 124, one of the investigators rapped on the door of the garage, identified himself, and tried to force an entrance. As he did so, Peter Hodorowicz and Clem Dowiat attempted to escape through a rear door but were apprehended. One John Wroblewski was also arrested at number 124. After the arrests the investigators found a still under the garage. (R. 258, 270-271, 277-278, 281, 282.)

On September 2 a complaint was issued against Hodorowicz and Dowiat and on the same day they were arraigned before the Commissioner, pleaded not guilty, and were released under bonds arranged by Frank Hodorowicz. The matter was set for hearing before the Commissioner on September 9, but was continued first to September 13 by agreement and then to September 23 upon motion of the Government. (R. 258-259, 270-271, 278, 285-286.)

Frank Hodorowicz had retained Henry Balaban to represent Peter Hodorowicz and Dowiat (R. 260, 727-728), and Balaban prepared a petition to suppress the evidence on the ground that it had been obtained by unlawful search and seizure (R. 727-728). Glasser knew of the petition for he

testified that "it was entered and continued over to the next day or some future day" (R. 949-950).

In the meantime Frank Hodorowicz had asked Kretske what he "could do about the case." Hodorowicz testified that Kretske said he would "look into it" and that thereafter Kretske told him he could "take care" of it, that it would cost \$800, and that "we will have to do it in a hurry." The night before the Commissioner's hearing Hodorowicz paid Kretske \$800. Kretske said he had to deliver the money to "Red" and Hodorowicz drove with him to the north side and waited while Kretske went into a building.* When Kretske returned to the car he said, "Everything is taken care of for tomorrow morning." On their return from the north side Kretske told Frank Hodorowicz to tell his brother Peter and Dowiat to claim ownership of the still. Frank Hodorowicz relayed this instruction to them. (R. 260, 296-297, 317-318.)

On September 23rd the Commissioner heard evidence on the petition to suppress, Balaban appearing for the defendants and Glasser for the Government (R. 285-286). The Alcohol Tax Unit investigators testified regarding the circumstances of the seizure and arrests (R. 278, 281, 282). Peter Hodorowicz testified that he owned the still (R. 262). The Commissioner took the matter under advisement and on September 24 sustained the petition.⁷ The defendants were accordingly dismissed (R. 278-279, 286).

* In response to a question by the court, Frank Hodorowicz said he knew that Kretske was referring to Glasser (R. 297).

⁷ Frank Hodorowicz testified at the trial below that he went with Kretske to the north side on the night of Septem-

With respect to this case Glasser testified that the investigators had no search warrant for 124 East 118th Place, that he resisted the petition to suppress the evidence, and that the Commissioner sustained the petition "as he should have done" (R. 949-950, 958-959). He also testified that he did not meet Kretske in regard to this case, that he had no knowledge of any deal between Kretske and Frank Hodorowicz, and that he did not receive \$800 from Kretske (R. 950, 960).*

The Stony Island Avenue still.—In the fall of 1937 Thomas Bailey and other investigators of the Alcohol Tax Unit were specially assigned to conduct a comprehensive investigation of the Hodorowicz gang (R. 384, 387-388, 390-391, 706). For several weeks in November and December these in-

ber 23, and that Peter Hodorowicz and Dowiat were discharged by the Commissioner the next morning (R. 297). It would seem, however, that he was confused about the date and that he saw Kretske the night *before* the Commissioner's hearing, for he testified that on this occasion Kretske told him to tell Peter and Dowiat to claim ownership of the still, and that if this were done "we will have it discharged from the Commissioner" (R. 297, 317-318). Obviously, if the Commissioner's hearing had already been held there would have been no occasion for the instruction to claim ownership.

* While it affirmatively appears in this case that because the investigators had no search warrant the dismissal had a wholly innocent explanation, still there was evidence from which the jury could have inferred that Glasser, through Kretske and Frank Hodorowicz, gave instructions to Peter Hodorowicz and Dowiat to claim ownership of the still at the Commissioner's hearing to support their petition to suppress the evidence, and that in this way he colluded with Hodorowicz and Dowiat to defeat any possibility of a successful prosecution.

investigators had under surveillance the premises 6949 Stony Island Avenue. They detected the odor of alcohol emanating from the premises and frequently saw Swanson, Dowiat, Joppek, and Anthony Hodorowicz enter and leave (R. 384-385, 387-388). On December 31 the investigators raided the premises with a search warrant and found a still and a large quantity of alcohol (R. 384, 706). Nobody was in the building at the time, but Anthony Hodorowicz and Dowiat were arrested on the street near the premises (R. 389). Swanson was also apprehended on the street but escaped (R. 386).

Anthony Hodorowicz, Dowiat, and Swanson were arraigned before the Commissioner on January 3 and 5, 1938, pleaded not guilty, and were released under bonds.* The matter was set for preliminary hearing on January 26 (R. 287-288).

Shortly after the seizure of the still Frank Hodorowicz arranged a meeting with Kretske at Hodorowicz' hardware store in order to "take care" of the case. Frank, Mike, and Anthony Hodorowicz, Swanson, Del Rocco, Horton, and Kretske were present. Kretske told the group there was a "lot of heat" on the case, but that for \$1,200 he would take care of it. This price was agreed upon, and \$500 was paid to Kretske at the meeting, the balance to be paid later.¹⁰ Kretske assured them that the \$1,200 would take care of "everything" and that nobody "would go to jail."

* Swanson had in the meantime arranged for a bail bond and surrendered (R. 227, 386).

¹⁰ Swanson and Frank Hodorowicz testified that the \$500 was paid to Kretske at the meeting at Frank's store (R. 229). Del Rocco testified, however, that it was paid later in Kretske's office (R. 244).

He said "Red" or "Dan" was to get part of the money. (R. 229-231, 244-245, 297-300.)

Thereafter Frank and Anthony Hodorowicz, Swanson, Del Rocco, and Dowiat went to Kretske's office to arrange for a lawyer to represent Anthony Hodorowicz, Swanson, and Dowiat. Kretske complained again that the "heat" was on and wanted more money. He then sent Swanson, Dowiat, and Anthony Hodorowicz to petitioner Roth's office. (R. 230, 244-245, 272-273, 297, 300, 344-345.)

Prior to January 26, 1938, the date set for the Commissioner's hearing, investigator Bailey asked Glasser to have the case continued because the Alcohol Tax Unit had under-cover men working in town and did not want their identity disclosed (R. 706). On January 26, upon Glasser's motion and over the objection of Roth the Commissioner continued the hearing to February 16 (R. 234-235, 288, 345-346, 834-835). In the interim Glasser presented the case to the grand jury and an indictment was returned against Anthony Hodorowicz, Swanson, and Dowiat (R. 288, 835, Ex. 55).

Anthony Hodorowicz, Swanson, and Dowiat, represented by Roth, were arraigned upon the indictment in March, pleaded not guilty, and the case was set for trial on May 5. On the latter date they appeared with Roth ready for trial, but found that the case had been stricken from the call with leave to reinstate. Roth had received no prior notice of this. The defendants were not thereafter tried on this indictment. (R. 231-232, 275-276, 346, 835-837; Ex. 226, R. 1034.)

None of the Hodorowicz crowd paid Roth for his services (R. 230, 310, 351). Del Rocco testified

that part of the money paid to Kretske was to "take care of another lawyer * * * to represent" the defendants (R. 244-245). Kretske testified that he received a "fee of \$200 or \$250" from Frank Hodorowicz and that he split this with Roth (R. 805). Roth stated that he received a fee of \$100 from Kretske (R. 868).

Glasser testified that he approved the complaint in this case and instituted the prosecution. He stated that on January 26, 1938, the date set for the Commissioner's hearing, Ritter, the investigator in charge of the local Alcohol Tax Unit agents, requested him to secure a continuance because the Alcohol Tax Unit did not feel it had enough evidence to win the case but would get it. Thereafter Ritter and Glasser discussed the case and at Ritter's request, and because Ritter was so "friendly" and "conscientious," Glasser presented the case to the grand jury. Glasser stated that before the date set for trial he complained to Ritter that the Alcohol Tax Unit had not produced the promised evidence, and that, upon Ritter's suggestion, he struck the case from the call (R. 918-920). Ritter was not called as a witness. (R. 920-921.) Bailey, who was working on the Hodorowicz investigation throughout the period the Stony Island case was pending, testified that he requested Glasser to secure a continuance of that case before the Commissioner, not because of lack of evidence, but because the Alcohol Tax Unit wanted to keep secret the identity of some of its agents who were working on the investigation (R. 706). In April, Bailey submitted a comprehensive report covering the entire investigation,

which included the data on the Stony Island Avenue still, thus obviating the need for further secrecy (*infra*, p. 110). Although clearly at this point neither reason assigned for non-prosecution continued to be valid, Glasser took no further action (see *infra*, pp. 110-111; 116-117).

The investigation of the Hodorowicz group.— During a period of several months beginning in November 1937, the Alcohol Tax Unit investigators worked to develop a case or cases designed to clean up the Hodorowicz crowd (R. 384-385, 387-391, 705-708).

Investigator Bailey testified that on January 26, 1938, he discussed with Glasser the Alcohol Tax Unit's investigation of the Hodorowiczes. Bailey outlined to Glasser a conspiracy case which he was developing which involved the Hodorowicz brothers and a number of others. He told Glasser that the investigators had connected the Hodorowiczes with a number of other stills in Chicago and East Chicago and with a large "drop" where 750 gallons of illicit alcohol had been seized, and that, in addition, under-cover agents had made two purchases involving Frank, Mike, and Peter Hodorowicz. Glasser then took Bailey to the office of then United States Attorney Igoe and told Igoe that Bailey had evidence involving the Hodorowiczes in a number of violations and had "quite a case" against them. Igoe expressed gratification because, he said, he had been after the Hodorowiczes for some time, and instructed Glasser to notify him when he had the case ready for the grand jury. Glasser told Bailey that if Bailey had the report ready he would present

the case to the ^{grand}~~ground~~ jury about February 18. (R. 706-707.)

Thereafter, throughout February and March 1938, Bailey had many discussions with Glasser regarding the Hodorowicz cases (R. 707). On March 21, during one of their discussions of the investigation, Glasser remarked to Bailey, "You have a good case against those Hodorowicz brothers, they will get five years" (R. 707-708).

On April 21, 1938, Bailey submitted a lengthy final report to Glasser, naming the Hodorowicz brothers, Swanson, Del Rocco, Dowiat, Hort, Jopek, and a number of others as prospective defendants (R. 708; Exs. 160, 163, R. 712). Though prepared and presented as a conspiracy case report (R. 708), it covered the entire investigation of the Hodorowicz gang, including the investigation of the Stony Island Avenue still, and contained evidence of substantive offenses against the persons named (R. 384-385, 387-388, 392, 705-707, 1005, 1007; Exs. 160, 163, R. 712; see also Ex. 37). At the time Glasser received the report from Bailey, he said he would present the case to the grand jury the following month (R. 708).

Frank Hodorowicz testified that in May Kretske told him that Frank was in a "jam" and was going to be indicted, but that if he paid Kretske \$1,000 there would be no indictment. Hodorowicz refused to pay Kretske (R. 300; see also R. 262).

During May, Bailey discussed his report with Glasser many times. On May 9 Glasser told Bailey he would present, later in the month, the two "purchase cases" set out in the report. Bailey testi-

fied that on that occasion he asked Glasser to set aside three evenings to go over the report with him. Glasser said he would but never did. On May 31 Glasser advised Bailey that he was going to present the purchase cases and would present the conspiracy case later. (R. 708.)

Glasser presented the purchase cases and on June 3, 1938, the grand jury returned two indictments, one against Frank, Mike, and Peter Hodorowicz and Dowiat, and the other against Frank and Peter Hodorowicz and Dowiat (R. 708-709). These indictments charged two sales of illicit alcohol in December 1937 (R. 709).

Later in June Glasser told Bailey he would present the conspiracy case to the grand jury the following month. He did not do so (R. 708-709).

After the indictments in the purchase cases were returned, Frank Hodorowicz asked Kretske what he could do. He paid Kretske \$250 and asked Kretske to "take care of it" (R. 311). Hodorowicz testified that he did not go to Kretske to retain him but rather to find out whether Kretske could "fix it up" and "take care that we did not go to jail" (R. 301, 311). When he later returned to Kretske's office Kretske told him that nothing could be done, that there was too much heat on him, that there was a report in Glasser's office, and that "they got Glasser over a barrel, he can't do anything," because Bailey was "in from Washington" (R. 300-301). After seeing Kretske, Hodorowicz went to Roth. Hodorowicz stated that Kretske and Roth "talked it over" and that they, with one of his brothers, went to Glasser's office

to look at "the papers" (R. 333). Some time later Roth told Hodorowicz that he had seen Glasser, that nothing could be done, and that Hodorowicz had better get a lawyer and prepare to defend himself (*ibid.*). Hodorowicz denied that he paid Roth \$100 for his services and said that the only money he paid to Roth was \$50 for his assistance in substituting some of the securities posted as bond (R. 333-334).

Hodorowicz apparently was not satisfied with Kretske's statements that nothing could be done; he testified that he again went to Glasser's office. He complained to Glasser that he was getting a "raw deal." Glasser said he could not "help it", that Bailey was watching the case and pressing him, that Hodorowicz had to go to jail, and that "Bailey says he will get my job if I don't put you away" (R. 302, 304). Glasser offered to show the Alcohol Tax Unit's report to Mike Hodorowicz and Frank Hodorowicz later sent Mike to Glasser's office (*ibid.*).¹¹

Bailey testified that on July 12, the date set for the arraignment of the defendants on the June 3 indictments, he saw Frank Hodorowicz in Glasser's office and heard Hodorowicz ask, "How did you like the case of whiskey I sent you?" Glasser replied that it was gone long ago; that he had given "most of it away" (R. 709).

Roth represented the defendants upon the arraignment (R. 302, 709) but Frank Hodorowicz thereafter dispensed with his services (R. 302). Hodorowicz testified that he then consulted Glasser about an attorney to defend him, that he

¹¹ Frank could not read well (R. 321).

mentioned the names of three attorneys, including Edward Hess, and that Glasser advised him that Hess could do him "a lot of good" (R. 302-303). Glasser also told Hodorowicz that Bailey was pressing him and that this was not an ordinary case (R. 304). Thereafter Frank retained Hess (R. 311, 334).

In September 1938 Bailey again discussed the Hodorowicz matter with Glasser and asked him to present the conspiracy case to the grand jury because he had information that the Hodorowicz brothers were still violating the law. Glasser said that he could present the conspiracy case the following month and advised Bailey that the two purchase cases were set for trial on October 3 (R. 710). Glasser never presented the conspiracy case (R. 709, 1007).

The purchase cases were continued successively at Glasser's request (R. 710) and were finally brought to trial on February 1, 1939, with Glasser representing the Government and Hess the defendants. In the first case the court directed verdicts in favor of Frank and Peter Hodorowicz at the close of the Government's case, and Mike Hodorowicz and Dowiat were convicted. In the second case Frank and Peter Hodorowicz and Dowiat were convicted. Sentences were imposed on March 20, 1939 (R. 710-711). At that time Glasser did not give the court the history of the defendants (R. 711). Hess requested probation, but the court replied that this was "not a case for probation." Bailey testified that Glasser "had nothing to say" (R. 711). Frank

Hodorowicz was sentenced to imprisonment for a year and a day and Mike and Peter Hodorowicz and Dowiat for nine months (R. 711).¹²

Roth testified that Kretske referred the Hodorowicz to him (R. 835, 861). He stated that he consulted Glasser to find out "what his attitude was with reference to the Hodorowicz" (R. 858) and quoted Glasser as saying that he "would not recommend anything but a substantial penitentiary sentence for the Hodorowicz" (*ibid.*). He volunteered that during one of his conversations with Frank Hodorowicz he told him that he "thought it advisable to have two lawyers," because, he stated, he "thought one lawyer should represent the three and a separate representative for Frank Hodorowicz" (R. 859). He "did a little work in connection with * * * substituting" securities on Hodorowicz' bond and prepared the substitution papers, but, he said, Hodorowicz "did not come back" (*ibid.*).

Kretske testified that Frank Hodorowicz asked him to "get some help from Mr. Glasser" and that he refused and told Hodorowicz the only thing he could do was to "go to court and battle it out the best way you can" (R. 799). He denied that Hodorowicz gave him any money (*ibid.*).

On direct examination Glasser testified that the report "was discussed between me and the agent and my superior" and that later on he "did use

¹² The same day, March 20, Glasser ceased to handle the alcohol tax call (R. 705). His resignation was requested in a letter from the new United States Attorney, Campbell, dated March 17 (R. 912). Igoe had been appointed to the bench in November 1938 (R. 905-906).

part of that report in making a presentation to the grand jury" (R. 927). He admitted that after the indictments were returned against Frank, Mike, and Peter Hodorowicz and Dowiat, Frank Hodorowicz came to his office at least three times.

On the first occasion Hodorowicz offered to plead guilty, but, Glasser said, he told Hodorowicz he would "recommend only five years * * * because that is the maximum under the statute" (R. 928). He stated that after Hodorowicz protested that there was no evidence against him, he read some, at least, of the report to Hodorowicz; that thereafter, at Frank Hodorowicz' request, Frank and Mike Hodorowicz came to his office, and that he "read the report to" them" (R. 928-929). Glasser said that on the occasion of Frank Hodorowicz' first visit to his office, Hodorowicz also asked him to recommend an attorney, that he refused to do so, that Hodorowicz asked him about Edward Hess and how Hess "stood with" Judge Woodward, and that he replied that Hess was "a very good lawyer" and that Hess "stood fine with" the judge (R. 929-930). Also on this occasion, Glasser said, Hodorowicz told him he would "spend ten thousand dollars to get out of this". Glasser stated that he replied, "Frank, if you spent ten million dollars, it wouldn't do you any good, you are going to the penitentiary this time" (R. 929).

¹³ Glasser testified that he read the report because his superior had told him that the "prosecution of defendants is not a baseball game, there is nothing secret about it," and that "as far as I am concerned, I don't think there is anything wrong with it" (R. 929).

Concerning Frank Hodorowicz' third visit to his office, Glasser quoted Hodorowicz as saying that Bailey had been out to see him and that Bailey had said to Hodorowicz, "What is the idea? That damned Glasser must be sore at you, we want you only to get three years and he wants you to get five years, what is the matter? Is he trying to get some money from you?" (R. 930; see also R. 1017).

Glasser also testified that "somebody" sent him a case of whiskey at Christmas 1937 but that "at that time" he did not know who was the donor (R. 950-951).

On cross-examination Glasser stated that he "was out to get the Hodorowicz" and that he told his superior, Judge Igoe, that "the Hodorowicz" were the biggest operators in town" (R. 1004). In explanation of his failure to present the conspiracy case to the grand jury he stated that "it would take a considerable length of time to try the conspiracy * * *; it is simply a catch-all" (R. 1004), and that he was under instructions not to present the conspiracy case (R. 1007). He admitted that he had Bailey's report in his possession from April 1938 (R. 1005), that it was "probably true" that the report contained evidence of additional substantive offenses committed by Anthony and Pete Hodorowicz, Swanson, Del Rocco, Dowiat, and other members of the Hodorowicz "mob" (R. 1007), and that the evidence with respect to the Stony Island Avenue case, which he had stricken from the call, was included in Bailey's final report of the Hodorowicz investigation (R. 1005). He also stated that

"All the time when I was dealing with Colonel Bailey on the Hodorowicz case he was coming to me and giving me facts regarding the violation of the Alcohol Tax laws that Hodorowicz and the crowd were supposed to be committing" (R. 1016). None of these other substantive offenses was presented to the grand jury (see R. 1005-1007) and Glasser offered no explanation of this. He did not deny Bailey's testimony that he repeatedly, even as late as September 28, 1938, more than two months after the indictments on the "purchase" cases had been returned, stated to Bailey that he would present the conspiracy case.

Judge Igoe, called as a witness on behalf of petitioners Glasser and Kretske, testified that he discussed the Hodorowicz matter with Glasser and Bailey, that thereafter Glasser reported that he was working up a "substantive case" and that his instructions to Glasser were to develop the substantive cases if there was evidence of violation of the alcohol tax laws and to present the conspiracy case "if he saw fit" (R. 891-892). Judge Igoe also stated that he did not favor prosecuting on the conspiracy charge (R. 903). He relied upon his assistants to keep him "advised about cases from time to time" (R. 907).

The Kaplan and associates cases

The Western Avenue and Spring Grove stills.—In September 1935 Kaplan solicited Victor Raubunas to invest money in the business of manufacturing illicit alcohol (R. 452). Kaplan assured Raubunas that he had "protection" through people in the Federal Building and that there would be no trouble (R. 453). Raubunas testified that he

gave Kaplan \$1,000 for his share in the business and that Kaplan, Raubunas and Adam Widzes established an illicit distillery at South Western Avenue in Chicago (R. 453-454, 473).¹⁴ Raubunas,

¹⁴ Raubunas testified to the following story which, we concede, has elements of incredibility: When Raubunas frequently complained to Kaplan about the lack of profits, Kaplan explained that he was paying \$430 a week for protection, \$400 to "big people" in the Federal Building, and \$30 to the police, and assured Raubunas that they would make money from the still (R. 454, 475). The "big people," Raubunas testified, were identified by Kaplan as "Red" and Kretske (R. 475, 500). Raubunas testified that he doubted that Kaplan was paying over this money and so he determined to find out who the "big people" in the Federal Building were. In February and March 1936 he frequented the courtrooms in the building until he learned the names and faces of petitioners Glasser and Kretske (R. 455-456, 475, 500).

In March Kaplan took Raubunas to the Great Northern Hotel in downtown Chicago and instructed Raubunas to wait in the lobby. Raubunas testified that he saw Kaplan meet and converse with Kretske and that thereafter, as he and Kaplan were leaving, Kaplan told him that Kretske, then still an assistant United States attorney, was a "big man" (R. 456, 500). Later, according to Raubunas, Raubunas heard Kaplan arrange by telephone to meet somebody at Kedzie Street and Douglas Boulevard. Raubunas, suspicious, followed Kaplan to see if Kaplan was in fact paying protection to federal officials. He testified that from a delicatessen store at the intersection of Kedzie and Douglas, he saw Glasser and Kretske approach in a light green car. Kaplan got in the car and drove off with them. In a short time the car returned, Kaplan got out, and Glasser and Kretske left (R. 457, 476). Raubunas saw the same thing occur in May (R. 458, 477). Glasser, Kretske, and Kaplan each denied that they had ever ridden in a car together (R. 722, 799, 960, 967). Kretske and Kaplan denied that they had met at the Great Northern Hotel (R. 722, 809).

Widzes, and Ralph Boguch erected the still (R. 368, 454, 473) and after operations were commenced in October 1935 (R. 475) Boguch was employed to attend the still and deliver alcohol (R. 366, 372).

In July 1936 the Western Avenue still was raided by special investigator Campbell and other agents of the Alcohol Tax Unit (R. 367, 445, 458, 478). None of the principals was present at the time (R. 372, 377, 459). Raubunas testified that in August Kaplan told him and Widzes that they were in trouble and that for \$500 apiece he could "squash" the case. Kaplan was well informed regarding the activities of the Alcohol Tax Unit agents for he told Raubunas that Campbell was investigating the case, that Campbell might arrest Raubunas, but that after the case was submitted to the "building" it was out of the investigator's hands. Raubunas paid Kaplan \$500. (R. 458-460.)

Raubunas testified that in December 1936 Kaplan told him that investigator Campbell was looking for him and that if he was arrested to say nothing (R. 463). On December 24 Campbell picked up Raubunas and took him to Glasser's office. Campbell asked that Raubunas be placed under bond, but, Raubunas testified, Glasser released him and told him to return after Christmas. Raubunas then went to Kaplan and threatened to talk but Kaplan told him, "If you squawk it is your own funeral, you know we meet people in the federal building who take care of that." Following Kaplan's advice, Raubunas did not return to Glasser's office. (R. 463-465.)

In October 1936, a few months after the Western Avenue still had been raided, Kaplan, Raubunas, Edward Dewes, and Stanley Slesur started a new still at Spring Grove (R. 460-461, 537, 626). Among others involved in this still were Joseph Cole (R. 462), Louis Pregonzer (R. 582-583), Ralph Boguch and Louis Rankin (R. 367-368, 619-620).¹⁸

This still was raided on January 19, 1937, by agents of the Alcohol Tax Unit, and Boguch and Rankin were arrested on the premises (R. 367, 465, 508, 529, 538, 620). They were arraigned before United States Commissioner Walker in Chicago, waived preliminary examination, and were released under bonds provided by the defendant Horton (R. 368, 379, 620, 621, 622). Horton told them Kaplan wanted to see them and they thereafter met Kaplan, Raubunas, and Slesur. Kaplan told Boguch and Rankin that "everything will be taken care of, that they would postpone the case until it got dusty, and would forget about it, drop it." (R. 369, 620).

In February 1937 and thereafter, Boguch, worried about his arrest at the still, asked Kaplan many times about the case. Boguch

¹⁸ In connection with this still, Raubunas testified that Kaplan again promised that the new still would be "protected" through "big people" in the Federal Building and that this protection would cost them \$350 a week (R. 461, 478, 505, 538). He told Raubunas he was to meet these people and make arrangements for the protection (R. 461-462, 477). Raubunas testified that he followed Kaplan and again saw him meet Glasser and Kratske in a car at the corner of Douglas Boulevard and Kedzie. Thereafter Kaplan told Raubunas that everything was "all right" (R. 462, 477).

testified that Kaplan assured him that he need not worry, that he would not have to go to court and that the case was "on the shelf" (R. 371, 372-373). Raubunas testified that Kaplan told him they were in trouble and that it would take \$500 apiece to "squash" the case. Raubunas paid Kaplan that amount and Kaplan told him to forget the case, that he, Kaplan, had people in the Federal Building "taking care" of it, that they had no trouble in the Western Avenue still case and would have none in this (R. 465-466).¹⁶

In July 1937 the reports of Campbell and White in the Western Avenue and Spring Grove cases, respectively, were submitted to Glasser (R. 451-452, 529; Ex. 81A, R. 533; Ex. 113, R. 532). Each report contained statements of witnesses (R. 533, 539-540; Exs. 81A, 113). The report on the Western Avenue still (Ex. 81A) was concerned with the activities of Kaplan, Raubunas, Widzes, and others, and the Spring Grove case report (Ex. 113) named Kaplan, Raubunas, Dewes, Slesur, Cole, Pregenzer, Rankin, Boguch, and others as the persons implicated (R. 539-540).

Both Campbell and White testified that they discussed the cases and their respective reports with Glasser on numerous occasions (R. 451-452, 529-530).¹⁷ Glasser presented the Spring Grove

¹⁶ Again in this case Kaplan was well informed regarding the progress of the investigation for in March or April he told Raubunas that investigator White was working on the case, that Cole and Pregenzer had "squawked," but that when White finished his job and turned the case over to the "building" he was through (R. 466).

¹⁷ White testified that during one conference on the Spring Grove case with Glasser and then United States Attorney

case to the grand jury on August 11, 1937 (R. 528, 530). White testified that he outlined the case to the jury and wrote the names of the prospective defendants on a blackboard in the order of their importance (Kaplan, Raubunas, Dewes, Slesur, Cole, Pregenzer, Boguch, Rankin, Joe Fernandez, and Cecil Simms). He stated that Cole, Simms, and Fernandez had indicated a willingness to testify and recommended that they be used as government witnesses (R. 530). Only Cole and one Robert Nessler were called as witnesses before the jury (R. 528, 530).¹⁸ Cole was called twice on August 11. After his second appearance, Glasser told White he thought Cole was crazy, that Cole had made a clear statement on his first appearance but that when he was recalled, he contradicted himself (R. 530-531). Glasser then withdrew the case from the jury (R. 528, 531).

Glasser presented both the Western Avenue and Spring Grove cases to the grand jury on October 7, 1937. The only witness called in the Western Avenue case were James Brown and Edward Jawor.

Igoe, Glasser said that he had heard Kaplan was a notorious bootlegger, that it appeared from White's report there was sufficient evidence to secure an indictment and conviction, and that this was the type of case he liked to see brought in (R. 530).

¹⁸ White had previously given Glasser the name of Peter Frett as a witness to be called. Frett had subleased the still premises to the persons who installed the still and White had obtained from him an affidavit which implicated Kaplan and which corresponded in part with Cole's affidavit (R. 532, 536-537; Ex. 113, R. 532). Glasser had a copy of this affidavit (R. 536). The day the case was presented Glasser showed White a letter from Frett stating that he was in Pennsylvania and would be unable to appear (R. 532).

On the same day the grand jury voted a no-bill as to Kaplan, Raubunas, Widzes and Boguch (R. 528; Ex. 94).

With respect to the presentation of the Spring Grove case White testified that he again outlined the case and gave the jury the names of the prospective defendants as he had done in August. No other witnesses were called and at Glasser's request this case was again withdrawn (R. 528, 531; Ex. 94). On this occasion, Glasser did not inform White why he had taken this action (R. 531).

On May 15, 1938, two days before Glasser presented the Spring Grove case to the grand jury for the third time (R. 528-529), the defendant Horton called Dewes and advised him that Kretske wanted to see him. Dewes went with Horton to Kretske's law office.¹⁹ Dewes testified that Kretske told him that the grand jury was meeting and that if he could raise \$100 he would not be indicted in the Spring Grove case. On May 17, in Horton's presence, Dewes paid Kretske \$100. Kretske told Dewes he would send the money "over to the red-head in the federal building" and that Dewes would be "no-billed" by the grand jury. (R. 542-543.)

The same day Glasser again presented the Spring Grove case to the grand jury. White again reported the case and listed the names of the defendants for the jury. Pregenzer was called as a witness but refused to sign a waiver of immunity and did not testify. Two of the persons who testi-

¹⁹ Kretske had resigned as assistant United States attorney in April 1937 (R. 187, 801).

fied were witnesses against Cole and Pregenzer. Peter Frett²⁰ was not called; Cole was called but was in the jury room for only a few minutes. (R. 531-532; see also R. 528-529; Ex. 96, R. 529.) White testified that he could not understand this because he had obtained a five-page statement from Cole (R. 531). E. L. Gates, the foreman of the May 1938 grand jury (R. 603), and Charles G. Ellis, the secretary (R. 588), testified that the presentation of the Spring Grove case was hurried (R. 588, 604). Ellis testified that before Cole was called in Glasser told the jury that it would not be necessary to consider his testimony because most of it would relate to Cole's illness. The jury was led to believe that Cole was mentally unbalanced, and in his examination of Cole, Glasser questioned him only regarding his illness (R. 590; see also R. 571-572; Ex. 96), although Cole was a key witness (R. 530, 531; see also R. 569-570; Ex. 113, R. 532). Ellis testified that Cole appeared to be perfectly normal (R. 599). Glasser had White's report in the case with him in the grand jury room but did not give it to the jury for examination (R. 602). Ellis stated that "the case was brought out with the inference that certain men were the officials of the brewery, so to speak, or distillery, and others were more or less just small fry. The testimony was given to us in more or less of a rapid-fire manner" (R. 588).

On May 17, 1938, the grand jury voted a true bill against Cole, Pregenzer, Rankin, Boguch, and Slesur, and a no-bill as to Kaplan, Raubunas, and Dewes (R. 528-529). Thus, of the four partners in the still (Kaplan, Raubunas, Dewes, and

²⁰ See *supra*, footnote 18, p. 122.

Slesur), only Slesur was indicted. Yet Ellis testified that to the best of the grand jurors' knowledge the men who were indicted were the owners of the still (R. 591) and, further, that Glasser advised the jury who should be indicted (R. 589). Because of Glasser's position and knowledge of the case, the jurors accepted his counsel (*ibid.*). On June 1, an indictment was returned against the true bill voted on May 17 (R. 529).

On or about May 17, Pregonzer, who had refused to testify before the grand jury, met Kaplan and asked him what he was going to do about Pregonzer's involvement in the Spring Grove case. Pregonzer testified that Kaplan told him not to worry. Kretske joined them and told Pregonzer, "Don't worry, you have nothing to worry about, you will be all right" (R. 582). After the indictment was returned, Rankin asked Kaplan what he should do. Kaplan took Rankin to Kretske's office but Rankin did not talk to Kretske (R. 620). Raubunas testified that in June, Kretske arranged to meet him and advised him that Slesur, Cole, Rankin, and Pregonzer had been indicted. Kretske asked Raubunas for \$200 to prevent "trouble" for Raubunas. Raubunas refused to pay him. (R. 472, 489.)

Cole, Pregonzer, Rankin, Boguch, and Slesur, the defendants named in the indictment returned on June 1, 1938, were not brought to trial during Glasser's tenure (see R. 372, 571-573, 582-583, 619-621, 623; Ex. 177, R. 1034).

In May 1939 Glasser's successor again presented the Spring Grove case to the grand jury.²¹ Cole

²¹ Glasser was relieved of the alcohol tax call in March 1939 (R. 705) and ceased active work in April (R. 912).

testified before the grand jury on this occasion (R. 573). This presentation resulted in the indictment of Kaplan, Dewes, and Raubunas, and the reindictment of Cole, Boguch, Rankin, and Pregonzer (R. 379-380, 489, 517-518, 550, 572-574, 583, 621-622, 713-714, 819-820; Ex. 130).²² This indictment was pending at the time of the trial below (R. 380, 517-518, 550, 583, 622; Ex. 130).

Concerning the Western Avenue case Glasser stated that he presented all available evidence to the grand jury (R. 918). On cross-examination he testified that investigator Campbell's report on the case was a good one and that he thought at the time that it was a good case (R. 967). He also testified that witnesses before the grand jury identified Kaplan as the person who bought the coal which was delivered to the still premises (R. 970). Finally, he stated that he concurred in the action of the grand jury and that Kaplan should have been no-billed (*ibid.*), but offered no explanation.

Glasser explained the failure of the May 1938 grand jury to indict Kaplan, Raubunas, and

²² Slesur had pleaded guilty on the first Spring Grove indictment and on two other indictments on March 31, 1939, and on June 30 was sentenced to four years on each, the sentences to run concurrently with a sentence of five years which had been imposed in the southern district of Indiana on April 4 (R. 630; Exs. 172, 177, 178, 179, R. 1034). Glasser appeared when the pleas were entered but his successor represented the Government at the time the sentences were imposed (R. 630).

After Kaplan and Raubunas were summoned to appear on the May 1939 indictment, Kaplan sought out Raubunas and told him that Kaplan's "friend Glasser" had resigned and that they had to find somebody to "fix" the case (R. 713-714).

Dewes in the Spring Grove case on the ground that Cole, the principal witness, was not reliable (R. 923-925). Apparently referring to his action on the occasion of the August 1937 presentation, he stated that the case was withdrawn at investigator White's suggestion in order to enable White to obtain corroborating testimony (R. 924). White admitted that he assented, on that occasion, to the withdrawal of the case after Glasser had told him that Cole had contradicted himself before the jury and that it was advisable to secure corroborating testimony (R. 530-531, 534). In respect of the presentation to the May 1938 grand jury, Glasser testified that the jury was not satisfied that Cole was reliable, that he called Cole "at least twice, maybe three times," and that on Cole's last appearance before that jury he examined him only concerning his illness (R. 925). Glasser offered no explanation of his action in withdrawing the case from the October 1937 grand jury. The general purport of his testimony regarding this case was that there was not sufficient evidence upon which to obtain the indictment of Kaplan, Raubunas, and Dewes (R. 922-926, 965). On cross-examination he admitted that he was thoroughly familiar with White's report before the case was presented (R. 970), and testified that White was a "fine agent" (R. 965).²³

Judge Igoe, who had been Glasser's superior (R. 890, 905-906), was called as a witness on behalf of Glasser and Kretske (R. 890). He testified that Glasser reported to him that he thought Cole was mentally unbalanced and was not a reliable

²³ See, in this connection, Point IX. 3, *supra*, pp. 87-89.

witness. Glasser also reported that the testimony of the witnesses did not support the report of the Alcohol Tax Unit and that as a result some of the accused persons would probably be no-billed (R. 893).

The Boguch removal case.—In February 1937, shortly after his arrest at the Spring Grove still, Boguch was arrested for removal to the district of Montana, where he had been indicted under the name of Ralph Sharp, alias Ralph Hoppe (R. 290-291, 369, 377). A day or two after his arrest, Boguch was released by the Commissioner under a bond provided by Horton (R. 289, 291, 369). After Boguch's release, Horton took him to a nearby tavern where they met Kaplan and Raubunas. Kaplan told Boguch he could "fix" the case for \$250; that Boguch did not "have to go to Montana. We can take care of it here, we have some friends and connections". Boguch paid Kaplan the \$250. (R. 370, 376-377.) Shortly thereafter the proceeding was dismissed by the Commissioner on the motion of the Government (R. 290-291, 370-371). Commissioner Walker testified that his records showed that the basis of the Government's motion to dismiss was that Boguch had been indicted in the northern district of Illinois (R. 291).²⁴ Though Boguch had been arrested at the Spring Grove still and was then

²⁴ Boguch testified that Kretske and Glasser were in the Commissioner's office the day the case was called and that Kretske said he did not think "this is the man" (R. 370-371). Boguch was represented by an attorney but he testified that he did not retain him (R. 370). Commissioner Walker testified that his record showed that assistant United States attorney Drymalski, who handled removals, appeared for the

at liberty under bond, he was not indicted until June 1, 1938 (*supra*, pp. 124-125). Aside from the notation in the Commissioner's record, it does not otherwise appear in the record here that Boguch was in fact under indictment in the northern district of Illinois in February 1937. Commissioner Walker had before him as he testified a certified copy of the indictment returned in the demanding district, but he did not testify that an indictment returned in the northern district of Illinois was presented to him at the time of the hearing. And his file (Ex. 68, R. 290) contains no such indictment. Weisbrod did not remember whether any papers were presented to the Commissioner (R. 784).

The Beisner farm still.—In October 1937 Raubunas, Widzes, Dewes, and Edward Farber established a distillery on a farm near Arlington Heights, owned by Emil Beisner (R. 468, 540-541, 689-690). This distillery was raided on November 18, 1937, and Farber, Widzes, Beisner, and one Neiss were arrested (R. 469, 484, 541, 689-690). Farber was released a day or two later under bond (R. 525, 690, 692).

Government (R. 291; Ex. 68, R. 290). Harry Weisbrod, called as a witness on behalf of petitioners Glasser and Kretske, testified that he represented Boguch on this occasion, that Drymalski appeared for the Government, and that he did not believe Kretske or Glasser were present (R. 783). Kretske was in office at the time (R. 187, 901), but he denied that he was present and said he had nothing to do with this case (R. 799). This matter was not mentioned in Glasser's testimony. The testimony of Boguch that Glasser and Kretske were present is not necessarily inconsistent with the testimony of the Commissioner and Weisbrod, and the jury could have found, despite Kretske's denial, that he and Glasser were present.

On about November 19, Farber arranged to meet Horton with Raubunas and Dewes. Bonds for the three men who were still in custody were discussed and Raubunas, Dewes, and Farber negotiated with Horton in order to "fix" the case. Horton said he could "take care" of the case for \$1,200. Raubunas paid Horton \$300 on account of the bonds, but they declined to do business with him on a "fix" because his price was too high. (R. 469, 507, 525, 541-542, 548.)²⁵

Raubunas and Dewes both testified that after they left Horton, Farber told them he thought he knew somebody else who would fix the case for less money and the three then went to Kretske's law office (R. 470, 486, 542, 548).²⁶ Kretske told them he could "take care" of the case for \$1,200; that "if Horton could take care of the case for \$1,200, I could," but that he would not do it for less (R. 470, 542, 548). They saw Kretske again the next day and Raubunas paid him \$300. Dewes, however, had been unable to raise any money (*ibid.*). Raubunas testified that Kretske told him to "forget about the case"; with your \$300 * * * everything will be all right" (R. 470). Raubunas saw Kretske again a day or two later

²⁵ Farber testified that the \$1,200 mentioned by Horton was for bonds and an attorney for the farmer Beisner and that these were the only matters with which they were concerned (R. 690-692).

²⁶ Raubunas had not known Kretske before, but he testified (R. 470) that Kretske was the same man he had seen with Kaplan at the Great Northern Hotel, and with Glasser on the three occasions in 1936 when Kaplan met Glasser and Kretske (*supra*, footnote 14, p. 118).

and complained that he was afraid of trouble. Kretske assured him there would be none and told him, "if you know Kaplan, you know he is having no trouble at Spring Grove" (R. 470-471). The Commissioner's preliminary hearing on the complaint against Farber, Widzes, Neiss, and Beisner had been set for November 24 (R. 290) and Raubunas asked Kretske about a lawyer to represent the defendants before the Commissioner. Kretske told Raubunas they did not need a lawyer since "Red is there" (R. 471).²⁷

In October 1938 Glasser presented the case to the grand jury, and on November 1 an indictment was returned against Raubunas, Dewes, and Beisner. Farber, Widzes, and Neiss were no-billed (R. 290; Ex. 169, R. 712, 1034; Ex. 156, R. 697-698).²⁸ Raubunas testified that after he had sur-

²⁷ Later in November 1937, Horton called Raubunas and told him Kretske needed \$100 more. Raubunas complained that he had already given Kretske \$300, but nevertheless gave Horton the additional \$100 (R. 471). In January 1938 Kretske summoned Raubunas to his office, told Raubunas that there was trouble again and that this would cost Raubunas \$400. Raubunas refused to pay. (R. 471-472.)

²⁸ Shortly before Christmas 1937 Glasser requested Attorney A. H. Cohen, who had represented Widzes for a short time while this case was pending before the Commissioner, to come to his office. Glasser told Cohen that he had heard that Cohen had said that he had withdrawn from the case because there was a "fix." Cohen told Glasser he had not said that and Glasser asked Cohen for a statement to that effect. Glasser took Cohen to the office of Warren Canaday, the first assistant United States attorney (R. 191), and Cohen there dictated and signed the statement requested by Glasser (R. 617-618; Ex. 128).

rendered and posted bond he saw Kretske and was told that it would cost him four or five hundred dollars to get out of this "trouble." When Raubunas said he had no more money, Kretske told him to go to Anderson, a lawyer previously retained by Raubunas, "and see what he can do for you" (R. 472). Dewes testified that he also consulted Kretske after he had posted bond on the indictment and asked Kretske how much he would charge to "take care" of the case. Kretske said, "I will take \$275, and you won't go to jail." Kretske also told Dewes that he would not represent Dewes but would provide a lawyer, that he "would take care of it" with his "friend, the redhead," and that Dewes would probably "get a suspended sentence, or an hour in the custody of the marshal, or probation" (R. 543). Dewes stated that in December 1938 he paid Kretske \$275 to "fix" the case. Kretske told Dewes not to worry (R. 544). Referring to the Spring Grove case, Kretske told Dewes, "You didn't go to jail there. You won't go to jail on this case"; and that his "friend was the Assistant Attorney over there." Kretske also told Dewes that he had resigned as assistant United States attorney "under pressure" and that for "holding the bag" he was to receive favors from the "redhead." (R. 544-545.)

In December, at Beisner's request, Dewes introduced Beisner to Kretske. Kretske told Beisner he would "take care" of his case for the same price he had charged Dewes. Beisner agreed. (R. 545.)

On December 27, 1938, Dewes pleaded not guilty. Petitioner Roth represented him, though Dewes testified that he had not retained Roth and did not pay him (R. 546). On one occasion in 1939 Dewes was with Roth in the Federal Building and complained that he wanted "to go to bat that day, and get it through with." Roth replied that he did not want to see Dewes go to jail and that he would "call up Norty [Kretske] and see if possible to go to trial." Roth did call Kretske and asked him if it was all right to go to trial that day. At the same time Roth asked Dewes for money, but Dewes told Roth he had already paid Kretske for "the fix". Roth replied that he was not interested in what Dewes had paid Kretske and that he was "fighting the case on the merits." (R. 546.)

The case was continued and Dewes testified that he went to Kretske to find out why it was not dropped. Kretske said "the redhead" wanted more money because Dewes was still "in the business." Dewes accused Kretske of conducting a "racket," and as he was leaving Kretske admonished him, "You never paid any money to Glasser. You paid me the money. I will stand up, I will go to jail. You never dealt with him." Kretske also told Dewes that Slesur was being brought in from the penitentiary and that if Slesur talked they "would all go to jail." (R. 547.) Later, after Dewes had learned that Glasser was going to resign, he told Kretske he wanted to get his case "over with" before Glasser "was out of the building." Kretske, Dewes stated, said that the alcohol cases had been taken away from his "friend" and that he could do nothing for Dewes (*ibid.*).

In April 1939, after Glasser had resigned, his successor re-presented the Beisner farm case to the grand jury and an indictment was returned against Farber, Widzes, Neiss and one Duthorn, as well as Raubunas, Dewes, and Beisner, the defendants named in the November 4, 1938, indictment (Ex. 168, R. 712, 1034).

In respect of the Beisner farm case, Glasser testified that an Alcohol Tax Unit agent, either Ritter or Campbell, had told him that some witnesses would testify before the grand jury against some but not all of those involved. He stated that he called before the grand jury all the witnesses produced by the agent (R. 935-936). Ritter was not called in the trial and though Campbell was a witness for the Government he was not questioned regarding this matter (see R. 441-445, 451-452).

Glasser did not explain why Raubunas, Dewes, and Beisner were not brought to trial on the October 1938 indictment during his tenure in office.

Attorney Daniel Anderson, called as a witness on behalf of petitioner Glasser, testified that he represented Raubunas in this case and that because of failing health he requested several continuances of the trial during the winter of 1938-1939 and that on other occasions the trial was postponed because either Glasser or the judge was busy with the trial of another case (R. 823-824). It is undisputed, however, that Anderson's associate represented Raubunas during the preparation and trial of the case. (R. 764-765, 827; compare also Ex. 169, R. 712, 1034, the United

States Attorney's docket in the Beisner farm case, and Ex. 177, R. 1034, the docket on the first Spring Grove indictment).²⁹

²⁹ In addition to the cases discussed above, Farber was involved with Jack Weber and Harry Dukatt (alias Brown [R. 700]) in the Union City still (R. 689, 698, 700), which was discovered in March 1937 (R. 689). Farber, Dukatt, and another were indicted on November 1, 1938, the same day the Beisner farm indictment was returned (Ex. 157, R. 697-698). Farber and Weber pleaded guilty and were placed on probation (R. 690, 699; Ex. 157, R. 698). Dukatt, who was represented by Roth (R. 699, 700), pleaded not guilty and the case as to him was continued. On May 3, 1939, Dukatt changed his plea and was sentenced to imprisonment (R. 699; Ex. 157, R. 698).

Slesur was involved with Stanley Wasielewski and others in the Downers Grove still case (R. 623-624, 631, 632, 629-30; Exs. 172, 178, R. 712, 1034) and with Rankin and others in the Wilmington still case (R. 620-621, 623, 625; Ex. 179, R. 1034). Wasielewski testified that he was arrested at the Downers Grove still in March 1938 and was released under a bond arranged by Slesur (R. 631). Shortly after his arrest he went with Slesur to Kretske's offices. As Slesur was leaving Kretske's private office, Wasielewski heard Kretske tell Slesur that he would "take care of everything" with the "red-head" (R. 631). Slesur and Wasielewski were indicted in this case in December 1938, but were not prosecuted on the indictment during Glasser's tenure (R. 630, 633; Exs. 172, 178, R. 712, 1034). In the Wilmington case, Slesur and Rankin were indicted in December 1938 (Ex. 179, R. 1034). This indictment was pending against Rankin at the date of the trial below (R. 621). On March 31, 1939, Slesur pleaded guilty on both of these indictments, as well as the June 1938 Spring Grove indictment, and on June 30 was sentenced to the penitentiary, the sentence in each case to run concurrently with a sentence previously imposed in the southern district of Indiana (Exs. 172, 177, 178, 179, R. 712, 1034; see also R. 630).

Other Cases

The Kwiatkowski case.—On August 26, 1938, after having been observed twice entering and leaving premises for which a search warrant had been issued and in which a still was found (R. 393, 395–396, 413), Walter Kwiatkowski was arraigned before the Commissioner on a complaint which had been approved by Glasser (R. 288–289, 396, 401, 413). Kwiatkowski had been arrested with non-tax-paid alcohol on his person (R. 395). The matter was continued for hearing to August 31 and then, by agreement, to September 12 (R. 288–289). Kwiatkowski was released on August 26 under a bond provided at the request of Frank Hodorowicz, by Horton and for which Kwiatkowski paid Horton \$200 (R. 288, 413, 731, 755). On August 31 Kwiatkowski, with Henry Balaban, an attorney whom he had previously retained, went to the South Chicago Savings Bank and withdrew \$3,750 from his account.³⁰ (R. 413, 440, 724–725).

A few days later Horton told Kwiatkowski that for \$600 he could “fix” the case. Kwiatkowski paid Horton the \$600 and Horton said, “Don’t be afraid, I’ll fix it” (R. 413). A hearing was held

³⁰ The bank had previously refused to allow Kwiatkowski to make a withdrawal because he did not have his pass book. The book had been found by the investigators at 7915 Saginaw Avenue at the time they executed the search warrant. It was because of this that Balaban went to the bank with Kwiatkowski on August 31 (R. 396, 413, 724). Balaban testified that Frank Hodorowicz brought Kwiatkowski to his office, that Hodorowicz was also present at the bank, and that the \$3,750 was turned over to Hodorowicz (R. 724–725). The latter, however, denied that he had any connection, direct or indirect, with the Kwiatkowski case (R. 329).

before the Commissioner on September 12; Glasser appeared for the Government and Balaban for the defendant (R. 289). Investigator Rossner testified concerning the circumstances of Kwiatkowski's arrest (R. 289, 397-398). On September 14 the Commissioner discharged Kwiatkowski on the ground that probable cause had not been shown (R. 289).

On November 10, 1938, Ritter, of the Alcohol Tax Unit, wrote to the United States Attorney, for the attention of Glasser, stating that additional evidence had been secured and requesting that the Kwiatkowski case be reconsidered with a view to presenting it to the grand jury (R. 585-586). Ritter enclosed a supplemental report prepared by investigator Goddard which contained statements of witnesses connecting Kwiatkowski with the still (R. 585, 586-587, Ex. 230, R. 1034). Glasser did not deny that he did not thereafter present this case to the grand jury (R. 962-963). In June 1939, Kwiatkowski was indicted (R. 430).

Glasser had no independent recollection of the Kwiatkowski case (R. 952). He stated on cross-examination that he did not receive a supplemental report prepared by investigator Goddard, that so far as he was concerned the case was closed when the Commissioner discharged the defendant, and that if a supplemental report did come into his office it was filed by his secretary and he "probably didn't even read the report" (R. 961-963).

The Abosketes matter.—Early in 1938 Frank Brown and several others had been convicted and sentenced in connection with the operation of a still in McHenry County, Illinois (R. 647, 663);

they were confined in a Chicago jail awaiting commitment (R. 649). Glasser had conducted the prosecution (R. 647). Brown wrote to investigator Bailey from the county jail stating that he wished to talk to Bailey (*ibid.*). On February 23 Bailey informed Glasser about the letter, told him that he had previously talked to Brown, that he believed Brown could give evidence connecting one Nick Abosketes with the still, and requested Glasser to have Brown brought to Glasser's office (*ibid.*). After first displaying considerable reluctance (R. 647-649), on March 10 Brown told Glasser and Bailey that he had rented the farm where the still was seized for Abosketes and that in return Abosketes promised him a share in the profits from the still (R. 649). Glasser never talked to Bailey about the Abosketes matter after that date (*ibid.*).

In the meantime, in the latter part of February, one William Brantman, a Chicago accountant who testified that he had known petitioner Kretske for many years (R. 650) called Abosketes and arranged to meet him (R. 663-664, 665). Brantman told Abosketes that he had connections in the Federal Building and had information that Abosketes was going to be indicted in the northern district of Illinois, and that for \$5,000, to be paid through Brantman, to somebody in the Federal Building, the case would be "fixed" and Abosketes would not be indicted (R. 664, 665, 668, 669-670, 672). Abosketes was not convinced that he was in any danger but Brantman saw him again later in February and told him, "They have the goods on you, Mr. Glasser has got it out of Brown" (R.

665-666). Abosketes concluded that Brantman's information was authentic (R. 665-666, 669, 670, 673) and on April 19, 1938, Abosketes paid Brantman \$3,000 and obtained a receipt from him, reciting that the \$3,000 was received "on account of services" (R. 651, 666, 670; Ex. 134, R. 651). Brantman testified that he rendered no services to Abosketes (R. 651). Brantman delivered the \$3,000 to Kretske (R. 652). Kretske told him Abosketes was to pay an additional \$2,000 (R. 653) and Brantman asked Abosketes for the balance (R. 666, 670, 671).³¹ A week or two after Abosketes paid the \$3,000 to Brantman, Brantman met him in Milwaukee and told him that everything was "in control"—that "everything is alright." (R. 670.) Abosketes was not indicted in the northern district of Illinois (R. 663, 666).

Glasser testified that he and Bailey questioned Brown and others regarding Abosketes' connection with the still and that they could get nothing out of them (R. 939, 940-941). Referring to Bailey's testimony (R. 649), Glasser stated that Bailey never reported that Brown had said that Abosketes was connected with the still (R. 940). On cross-examination he stated he did not remember whether Brown told him and Bailey that Abosketes was connected with the still (R. 954). But he had previously testified that he made strenuous efforts to secure evidence against Abosketes (R. 936-937), even to the extent that he made a trip to Washington to attempt to get commutations of the sentences of the convicted defendants in exchange

³¹ The claimed balance was never paid (R. 671).

for their testimony against Abosketes (R. 939-940).³²

The Paul Svec incident.—Paul Svec was associated with one Albert Yarrio (R. 557, 560-562, 776). Kretske testified that he had "known of" Yarrio for about 15 years (R. 813). Yarrio and Svec frequented a barber shop which was a general meeting place of gamblers and bootleggers (R. 562).

In June 1935 William Workman and numerous others, including Yarrio, had been indicted in connection with a large still located in a warehouse (R. 193, 194, 197, 198, 211). This was one of Glasser's first cases (R. 914, 976). Yarrio was appre-

³² Glasser contends (Pet. 45-46) that no incriminating inference against him can be drawn from the facts testified to by Brantman and Abosketes because Brantman first approached Abosketes before the date of Glasser's and Bailey's first interview with Brown. Bailey's testimony indicates that he and Glasser first questioned Brown in Glasser's office on February 23, 1938 (R. 647). Glasser asserts that the date of Brantman's first conversation with Abosketes was February 20 or 22. This assertion is predicated upon the statement that Abosketes' answer to the prosecutor's question, appearing at the bottom of page 663 of the printed record, concerning the date of Abosketes' meeting with Brantman, appears at the top of page 658 owing to a printing error. That answer, Glasser asserts, was, "The 20th or 22nd of February." Even if there is a printing error in the record, the premise upon which the argument is founded is unsound. Abosketes testified that he first met Brantman "in February 1938 right after the trial they had for this still in Illinois." The prosecutor then asked, "In February of 1938?" (R. 663). No answer to the question appears in the record at that point, and we will assume that the first line of page 658, which reads, "A. The 20th or 22nd of February," is Abosketes' answer. Abosketes subsequently testified that he met again Brantman in Chicago "later about 1 week * * * the last part of February" (R. 665-666). Later he stated that

hended in November 1935 and taken to Glasser's office but refused to make a statement (R. 210-211). Workman and one Young, both of whom were connected with the corporation which owned the warehouse (R. 197, 199), pleaded guilty and were placed on probation (R. 199, 215). The indictment was subsequently dismissed as to the remaining defendants, except Yarrio, either because, as explained by Glasser, there was no evidence against them, or because they were minor figures and had promised to testify for the Government (R. 914-915, 973-975, 987, 989). The last action in the case was on April 1, 1936, when the indictment was dismissed as to Yarrio and one E. L. Welch for want of prosecution (R. 194, 195). Frank White, one of the investigators who worked on the case, testified that he did not like the final disposition ~~again Brantman in Chicago "later about a week * * * the last part of February" (R. 665-666). Later he stated that~~

his meetings with Brantman occurred during the months of February, March, and April 1938 (R. 666). On cross-examination he stated: "Those twelve people [the persons whom Glasser and Bailey had questioned] were convicted the first part of February 1938, they were being held over here in the jail after they were convicted. It was about ten days and two weeks after they were convicted that I got a telephone call from this man Brantman to come to Chicago" (R. 668). Again on cross-examination he stated: "About thirty days or forty days or so after that [his first meetings with Brantman in February] I came to Chicago and gave Mr. Brantman my \$3,000" (R. 670). Actually the money was not paid until April 19 (R. 651), approximately two months after the February meetings (Ex. 134, R. 651). It is thus apparent that Abosketes did not remember the exact dates of his meetings with Brantman. His testimony shows that he was certain only that the first two meetings occurred in the latter part of February. Indeed, the answer "The 20th or 22nd day of February" shows that Abosketes was stating only an approximate date.

of the case, but that there was nothing of which he could complain (R. 214).

Connors, an Alcohol Tax Unit investigator, testified that he saw Yarrio in Glasser's office on two occasions in 1938 and 1939 (R. 698, 699). Glasser admitted that Yarrio had been in his office but said that Yarrio was there in 1935 or 1936 in connection with the Workman case and that on those occasions Yarrio denied any connection with that still (R. 978-979). With respect to Yarrio's dismissal for want of prosecution, Glasser testified that the witnesses he was relying upon failed to identify Yarrio, that he reported this to the court, and that the court of its own motion dismissed as to Yarrio (R. 931, 983-984).

Svec testified that he, Horton, and Kretske met Yarrio in the vicinity of the barber shop in August 1937, shortly after Svec had been arrested on another alcohol charge (R. 560-562). He also testified that on two occasions later in 1937 he was in the shop with Yarrio when Glasser drove past in a green 1936 model Buick with white side wall tires and sounded the horn of his car.³³ Yarrio, he said, left the shop immediately after Glasser drove past (R. 563-564).

³³ Robert Denk, called as a witness on behalf of Glasser, testified that in 1936 Glasser purchased a 1936 model Buick (R. 829). And on cross-examination Glasser stated that in 1936 he had "a green Buick with white side walls as Paul Stryke (*sic*) said" (R. 1015). It will be recalled that Raubunas testified that Glasser and Kretske were in a "light green car" when he saw them meet Kaplan in April 1936 (R. 457).

In October 1937 Svec was indicted for the offense for which he had been arrested in August (R. 557). He was tried in October 1938, with Glasser representing the Government and Roth the defendant. Svec was convicted and sentenced to the penitentiary (R. 557, 854).

In December 1938, while he was at liberty under an appeal bond, Svec was again arrested by investigators of the Alcohol Tax Unit (R. 557). He testified that the investigators took him that night to their office and that from there he called Glasser on the telephone. Svec's version of this conversation was that he told Glasser the investigators had told him that if Glasser consented they would release him. He denied that money was mentioned. At the end of the conversation, according to Svec, Glasser told him that if the investigators released him he would "throw them in the can" with Svec (R. 564-565).

Glasser's version of his telephone conversation with Svec was as follows: Svec said that he had offered the investigators money and told them he knew Glasser, that the investigators told him it was "okay" to call Glasser, that he did not have any money with him, and that he wanted Glasser to tell them "it's okay". Glasser testified further that he told Svec, "Why you so-and-so, I convicted you twice. If you are guilty this time, I will convict you again" (R. 932). He said that he then called the Alcohol Tax Unit's office and told the investigators to bring Svec to his office the next morning (R. 933).

The next morning Glasser arranged with the Federal Bureau of Investigation to secrete an

agent in an anteroom adjoining his office (R. 583, 933). When the investigators arrived with Svec he asked them to wait outside while he talked to Svec (R. 557-558, 933-934). The Federal Bureau of Investigation agent testified that Svec told Glasser, in response to the latter's questions, that the investigators told him to call Glasser and have him guarantee that Svec would pay money to them, that he had never seen Glasser outside the Federal Building, that he had never paid Glasser any money or received from him any promise in regard to any prosecution, and that he had never seen Glasser with Yarrio. At the conclusion of the conversation, Glasser asked Svec if he would be willing to sign a written statement and Svec agreed to do so (R. 583-584; see also R. 558-559, 934).

Svec testified that prior to his hearing before the Commissioner he talked to Roth regarding his conversation with Glasser and that Roth told him he "stood up O. K." (R. 559). He also testified that Yarrio retained Roth to represent him at the Commissioner's hearing. Svec was discharged by the Commissioner (*ibid.*).

The Vitale cases.—In October 1935 a still located on the farm of Charles Meyers in La Salle County, Illinois, was raided by the county sheriff, and Leo Vitale was arrested (R. 441; Ex. 210, report dated September 2, 1936). The Alcohol Tax Unit had previously investigated the still. Cloonan, one of the investigators, testified that the investigation disclosed that Vitale owned the still and operated it with others from August to October 1935 (R. 442). Cloonan prepared a full report of the investigation (Ex. 210, report dated September 2, 1936) and thereafter Glasser discussed the case

with Cloonan (R. 442). The case was not presented to the grand jury until the spring of 1938, when an indictment was returned against Vitale, James Simanello, and others (R. 250, 441, 442; Ex. 165, R. 712, 1034). Prior thereto the Alcohol Tax Unit had made other investigations of Vitale which involved him in the operation of other stills (R. 443; Ex. 210, reports dated November 14, 1935, and October 30, 1937). Vitale and Simanello were arraigned before Judge Wilkerson in July 1938, and Vitale pleaded guilty (R. 253; Ex. 165). Before sentence was imposed Glasser told Judge Wilkerson that Vitale was on the Meyers farm the night of the raid, that he had investigated and found that Vitale had no record, and suggested that Vitale be sentenced to one hour in the custody of the marshal. Judge Wilkerson accordingly imposed the sentence suggested by Glasser (R. 250-251; Ex. 165). Simanello was arraigned next and pleaded not guilty, but later changed his plea (R. 251, 253; Ex. 165). At the time he was brought before Judge Wilkerson for the pronouncement of sentence, the judge asked Glasser how it had happened that Vitale had received so light a sentence. Glasser replied that he did not know. (R. 253.)

In December 1938, a libel action involving one Chrysler sedan which had been seized by investigators of the Alcohol Tax Unit was tried before Judge Barnes (R. 218-219). The investigators had raided the residence of Vitale in Peru, Illinois, seized an illicit still and arrested Vitale (R. 218-219; Ex. 210, report dated August 31, 1938; Ex. 36).³⁴ The car was found in a garage

³⁴ Exhibit 36 is to be found in Exhibit 229, the file in the Chrysler sedan case.

located only about a foot behind the residence (R. 219). Investigator Dowd testified that he had investigated this still before the raid and observed that the car was used to haul sugar from a warehouse to the residence, in the transportation of Vitale and his associates, and in "tailing" carloads of alcohol to Springfield (R. 219). He also stated that he had made a report on the investigation and seizure of the still which contained evidence that the car had been used in connection with Vitale's bootlegging activities (R. 222, 224; Ex. 210, report dated August 31, 1938). In the libel action Rose Vitale, the wife of Leo, was the claimant; the car was registered in her name (R. 222). Glasser appeared for the Government and Rose was represented by petitioner Roth (R. 219), to whom she had been referred by Kretske (R. 875). The action was tried before Judge Barnes on investigator O'Hara's condensed report of the seizure of the car (R. 717; see also R. 222; Ex. 36). That report related the circumstances of the seizure, described the location of the garage, and stated that there were marks on the floor of the trunk of the car showing where the corners of cans of alcohol had cut into the wood and that the car had been used "to defraud the Government of the tax imposed on distilled spirits" (R. 717; Ex. 36). Investigator Dowd testified that at the trial of the libel action Roth stated to Judge Barnes that Vitale was "O. K.," that the car had not been used in connection with the manufacture of alcohol and that it belonged to Vitale's wife. Dowd testified further that Glasser sat silent or, at most, confirmed what Roth had stated to the court, and that

he protested to Glasser that the facts were not being fully disclosed to Judge Barnes, that the judge had not been informed of Vitale's previous conviction in the Meyers farm still case, and requested Glasser to call him to the stand. Glasser told Dowd to "get the hell out of here," and Dowd left (R. 219-220). Dowd also stated that the full report on the investigation and seizure of the still was not read to Judge Barnes (R. 222, 223). The libel was dismissed (R. 220).

Roth testified that after Glasser opened by reading O'Hara's report of the car seizure, Roth argued that the Government had not made out a case for seizure upon the opening statement, and that he therefore moved for a finding for the claimant. Judge Barnes then ordered the car returned to the claimant. (R. 838.)

Judge Barnes, called as a witness in behalf of Glasser, testified that the libel action was tried on the car seizure report, that the report was not a sufficient showing upon which to forfeit a car, and that "The car was not in the place where the still was, the car belonged to the wife, and I had no more right to take that car than I had to take yours" (R. 717-718). It clearly appears from his testimony, however, that no further proof was adduced on behalf of the Government (R. 718), and he testified on cross-examination that in libel actions he relies upon the assistant United States attorney to give him all the facts necessary to a proper decision (R. 721).

Dowd testified that he later talked to some people who had talked to Vitale after the Chrysler affair. He thereafter reported to Glasser that Vitale had bragged that "he got out of this

for nine hundred dollars," and told Glasser he had a number of witnesses to whom Vitale had talked. Dowd asked Glasser, "Let us bring him in and see who got those nine hundred dollars." Glasser said he would, but never did. (R. 221.) Glasser denied that this conversation with Dowd occurred (R. 1003).

With reference to the Meyers farm case, Glasser testified that he recommended a sentence of one hour for Vitale for two reasons, first, because investigator Dowd told him the Alcohol Tax Unit had a better case against Vitale in Peoria and suggested to him that he recommend such a sentence, and, second, that Vitale had already been convicted and fined in the state court on a charge of operating the still, and that his instructions from his superior were that a man was to be prosecuted but once for each offense (R. 915-916). But he admitted on cross-examination that at the time Vitale was sentenced he had in his possession reports from the Alcohol Tax Unit regarding other cases it had developed against Vitale, as well as the report in the Meyers farm case, and that he did not tell Judge Wilkerson about the other cases (R. 996-999).³⁵ He explained that "the Judge didn't ask me to tell him about cases where the fellow has not been convicted" (R. 998). Nevertheless, Glasser also testified that "I was anxious to tell

³⁵ The reports referred to are to be found in exhibit 210, the file in the Meyers farm case (*United States v. Vitale et al.*). Prior to July 1938, when Vitale was sentenced to one hour in that case, the Alcohol Tax Unit had submitted reports dated November 14, 1935, and October 30, 1937, respectively, concerning stills seized at Lowell, Illinois, and at Vitale's home in Peru.

Judge Wilkerson the type of fellow Vitale was and I did" (R. 999).

Concerning the libel case, Glasser said he "might have" told Dowd to get out of the courtroom (R. 1001). He admitted that at the time of the trial before Judge Barnes he had the Alcohol Tax Unit's full report of the investigation of the still found in Vitale's home at the time the car was seized (R. 999-1000; see Ex. 210, report dated August 31, 1938). The latter report was not read to Judge Barnes (R. 1000). In explanation of this Glasser said (*ibid.*), "I did not tell Judge Barnes a word about Leo Vitale before he disposed of this libel case because it does not belong in a libel case," and again (R. 1002), "The criminal file is not used in connection with the civil file. I never did. It shouldn't be."

The Wroblewskis matter; the Roth-Campbell incident.—Edward and William Wroblewski²⁶ were indicted in the northern district of Indiana in April 1938 for conspiracy to violate the alcohol tax laws (R. 680). Alexander Campbell, an assistant United States attorney of that district, testified that Roth came to his office in Fort Wayne, Indiana, in September 1938 and inquired about the Wroblewski case. The files were not available at the time and Roth asked Campbell, if the latter found on checking the files that the

²⁶ The Wroblewskis had previously been arrested and questioned when William was apprehended with a quantity of illicit alcohol in his possession (R. 634, 713); Glasser had released Edward (R. 643-644), and William, after pleading guilty, had been sentenced to three months, although it appears that Glasser did not oppose his petition for probation. (See R. 634, 744-745.)

Wroblewskis had not been indicted, whether "some arrangement can be made so that they will not be indicted, isn't there some way we can handle this so it does not have to be presented to the Jury." Roth said he knew "all about grand juries * * * how they work," and offered Campbell \$500 or \$1,000. Campbell refused the offer and advised Roth that if the Wroblewskis were not already indicted the case would be presented to the grand jury in due course. Roth then said, "Well, that is the way we handle cases in Chicago sometimes." Campbell testified that he reported the incident the next morning to either investigator Bailey of the Alcohol Tax Unit or the Federal Bureau of Investigation (R. 681-682).

The Wroblewskis were tried on the indictment in Hammond, Indiana, in December 1938, were convicted and sentenced to imprisonment (R. 683). The convictions were appealed and they were released on appeal bonds (R. 635, 676, 683). Edward and William Wroblewski testified that they were questioned by Bailey before and after the trial (R. 635, 677). Both testified that on one occasion after the trial, after Bailey had arranged to meet them at the office of the Federal Bureau of Investigation, Edward talked to Roth and that as a result they did not keep their appointment at the Bureau (R. 635-636, 677). William told Roth on one of these occasions that "the law" was trying to get information from him. Roth advised him that if he gave any information he might implicate himself (R. 636; see R. 878).

In July 1939, after the Wroblewskis' conviction had been affirmed (*United States v. Wro-*

blewski, 105 F. (2d) 444 (C. C. A. 7)), Roth, this time accompanied by Kretske, again visited Campbell (R. 683). In the meantime, Edward Wroblewski had pleaded guilty to an indictment in the southern district of Indiana and was then serving the sentence of imprisonment imposed there. The sentence in the southern district was to run concurrently with that in the northern district (R. 643, 676, 684). Campbell testified that on this occasion he, Roth and Kretske discussed the matter of the two sentences running concurrently (R. 683-684). As he was leaving the office Roth told Campbell that Bailey was "conducting some sort of an investigation in Chicago" and that he did not "want to get mixed up in" it. He asked Campbell to use his influence to "pull [Bailey] off of this investigation." Campbell refused. He testified that he thereafter reported the incident to Bailey or the Federal Bureau of Investigation as he had done on the previous occasion (R. 684-685).

On August 1, 1939, Roth, again accompanied by Kretske, surrendered William Wroblewski in Hammond, Indiana, for commitment to the penitentiary (R. 635). As they left him, Kretske admonished Wroblewski, "Don't say anything" (R. 636).

Roth admitted that he went to see Campbell in Fort Wayne in September 1938 and July 1939 but denied that he offered him a bribe (R. 843, 846). His explanation of the September 1938 meeting was that he merely offered to enter a plea of guilty for the Wroblewskis if Campbell would agree to recommend a nominal sentence.

He told Campbell that his clients were poor, that he was not sure of getting a fee, and that he was therefore anxious to avoid the necessity of a trial. According to Roth, the only mention of money was his remark to Campbell, "The days of five hundred and one thousand dollar fees from bootleggers are gone". (R. 841-842.) With respect to the July 1939 meeting, Roth testified that he went to see Campbell regarding the issuance of the commitment papers upon the sentence imposed upon Edward Wroblewski in the northern district of Indiana (R. 847-849). He said he did tell Campbell on this occasion that Bailey had been questioning some of his clients and that he had heard Campbell's name mentioned in Chicago in connection with the Wroblewskis case, but denied that he asked Campbell to use his influence with Bailey to stop the investigation (R. 850, 851-852).

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CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. ~~796~~ 30

DANIEL D. GLASSER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE

AND

BRIEF OF AMICI CURIAE IN RE PETITION OF
DANIEL D. GLASSER.

RALPH M. SNYDER,

no JAMES A. HOWELL,

no PAUL H. MOORE,

no OPAL L. BUNN,

no DANIEL A. CAREY,

no DANA R. SIMPSON.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

No. 796.

DANIEL D. GLASSER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE.

The undersigned members of the bar of the State of Illinois respectfully petition this Honorable Court for leave to appear as *amici curiae* and for leave to file their brief in support of the petition of Daniel D. Glasser for a writ of *certiorari*, the written consent of all parties to this case having been filed with the clerk of this court.

REASONS FOR THE MOTION.

1. This case involves the rendering of faithful public service by a capable Assistant United States Attorney and is of great importance to the members of the bar.
2. A faithful and capable Assistant United States Attorney stands convicted of a crime which in the opinion of the undersigned he did not commit.
3. The record does not sustain the conviction of the petitioner, Daniel D. Glasser.

4. The conviction herein will unjustly and wrongfully deprive a member of the bar of his liberty and will result in his disbarment.

5. The sustaining of a conviction on the present record, and the refusal of this Court to review that conviction, will discourage capable lawyers from accepting appointments from governmental agencies. Every attorney engaged in public service is in jeopardy if he can, as here, be convicted of a crime on the basis of speculation and vindictiveness.

The facts upon which this motion is based are contained in the record of the proceeding, which now is before this Honorable Court.

WHEREFORE the undersigned pray that they be granted leave to appear as *amici curiae* and for leave to file their brief in support of the petition of Daniel D. Glasser for a writ of *certiorari*.

Respectfully submitted,

RALPH M. SNYDER,

JAMES A. HOWELL,

PAUL H. MOORE,

OPAL L. BUNN,

DANIEL A. CAREY,

DANA R. SIMPSON.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 796.

DANIEL D. GLASSER,

*Petitioner,**vs.*

UNITED STATES OF AMERICA.

BRIEF OF AMICI CURIAE IN RE PETITION OF DANIEL D.
GLASSER.

This brief is suggested by practicing lawyers of Chicago who are familiar with the record in office of Daniel D. Glasser and with this case.

It is felt this case is so fraught with error and injustice and so unlawfully deprives a member of the bar of his liberty that it will jeopardize the security and reputation of any lawyer engaged in the public service and will discourage honorable and capable lawyers from accepting employment by agencies of the United States Government. We do not deem it within our province, in view of the petition and brief filed herein by the Petitioner, to outline all the instances in which Mr. Glasser's rights were degraded and ignored. We confine ourselves to a brief mention of those instances which have outraged our own sense of justice and of our views of why his conviction should be reversed.

1. There is no showing in the record that any indictment was returned by any grand jury charging Glasser with the commission of any crime.

2. Glasser was tried on nebulous charges of conspiracy with no proof before the jury to sustain such charges.

3. Glasser was deprived of the services of his attorney through the appointment by the trial judge of Glasser's attorney to represent one of the defendants who was without legal representation and whose interests were adverse to those of Glasser.

4. The trial judge who was brought to Chicago to hear the case acted in the capacity of a witness and prosecutor, and Glasser was deprived of the opportunity to have his case tried before a judge serving only in judicial capacity.

5. Three United States District Judges who were intimately familiar with Glasser's services as Assistant United States Attorney and in many instances with specific matters charged in the trial, voluntarily testified in his behalf not only as to good character and ability but also as to the specific facts with which they were familiar.

6. The record contains the positive testimony of Glasser's immediate superior, former District Attorney and now District Judge Igoe:

"The various actions of my assistant, Mr. Glasser, were taken up by him and discussed with me, and I knew all of the orders that were rendered either before or shortly after they were rendered and they had my approval." (R. 895.)

7. The mode in which the jury was selected was contrary to law.

The undersigned as members of the Bar of the State of Illinois and fellow practitioners of the petitioner Glasser in the City of Chicago, Illinois, believe that in the interests of right and justice they should be permitted to intervene

herein and as *amici curiae* to present to this Court their views of why the conviction of Glasser and the judgments of the courts below are wrong and should be reversed. Glasser served his country faithfully and well, both as a member of its armed forces and as an efficient public servant in the capacity of an Assistant United States Attorney. While Glasser is not entitled to consideration unless he has been wronged by the proceedings below, the undersigned are firmly of the opinion and strenuously urge that this record does not support the conviction and that this Court should review the case in order to avoid a grave injustice of far-reaching effect to a faithful and efficient public servant and a member of the Bar of this Honorable Court.

Respectfully submitted,

RALPH M. SNYDER,

JAMES A. HOWELL,

PAUL H. MOORE,

OPAL L. BUNN,

DANIEL A. CAREY,

DANA R. SIMPSON.



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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 30

DANIEL D. GLASSER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**BRIEF OF AMICI CURIAE IN BEHALF OF
PETITIONER, DANIEL D. GLASSER.**

RALPH M. SNYDER,
JOHN ELLIOTT BYRNE,
PAUL H. MOORE,
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**BRIEF OF AMICI CURIAE IN BEHALF OF
PETITIONER, DANIEL D. GLASSER.**

On behalf of the practicing lawyers of Chicago, whose sense of justice and fair play has been outraged by the unfair tactics, innuendoes and failure to prove any wrongdoing on the part of petitioner, Daniel D. Glasser, we believe that our duties to this Court will be discharged by a discussion of but one of the seven points mentioned in the brief of Amici Curiae, which by leave of this Court was previously filed. That point was and is:

"Glasser was tried on nebulous charges of conspiracy with no proof before the jury to sustain such charges."

The other points mentioned in our brief are fully treated in the Petition for Writ of Certiorari, the Reply Brief for Petitioner, and the brief for Petitioner, all filed by Messrs. Homer Cummings and William D. Donnelly.

There was no evidence whatever that Glasser either solicited or received any bribes from anyone, on the contrary, the Government admitted "there is not anything in this indictment that says anybody paid Glasser a bribe" (R. 154).

There was no evidence whatever that Glasser conspired with anyone for any purpose. As a last resort, the prosecution relied on the innuendo that *someone* had been bribed (not Glasser) and that Glasser had failed in the discharge of his duties. There is no proof that Glasser either wrongfully withheld material evidence or an available competent witness or did any unlawful act or omitted to do any necessary act in the conduct of his cases before the Commissioner, before the Grand Jury, the District Court, or the Court of Appeals.

The absence of this proof is significant, in view of the fact that Glasser tried about half of the cases that were being tried in the District Attorney's Office in Chicago, during the four years of his tenure. Glasser presented hundreds of cases before the grand jury. Of the forty Grand Juries before whom he appeared, there should have been some eight hundred jurors, some of whom would have had information if information there was that Glasser had done anything wrongful. Not one grand juror testified that Glasser either did anything wrongful or omitted to do anything that he should have done.

Of the cases before the District Court in which Glasser was consistently engaged for four years, not one of the

judges testified to any wrongful act or any wrongful omission on the part of Glasser, on the contrary, three of these judges, namely Judges Igoe, Barnes and Woodward, voluntarily appeared and testified in Glasser's behalf to the effect that at all times he performed his duties fully, capably and conscientiously.

While the prosecution suggested that Glasser had failed to present competent witnesses as to material matters, of all the names of witnesses given in the investigator's reports, most of whom must have been available to the Government, not one was produced at the trial to testify either that he was available for Glasser to use or that he had competent knowledge of material matters in any of Glasser's cases, or that through any wrongful act or omission of Glasser, any of said witnesses was prevented from giving his testimony. Of the instances where the charge was made that Glasser failed to act, we adopt the discussion appearing at pages 75-77 of the brief for Daniel D. Glasser, Petitioner. On the contrary, the facts illicit at the trial furnished substantial proof that Glasser was not only innocent, but that he was a capable and outstanding assistant District Attorney. Judge Barnes and Judge Igoe, so testified; Judge Barnes stating that he was "an excellent prosecutor, possibly too good for the criminals" (R. 720).

Judge Igoe, formerly his immediate superior, testified "The various actions of my assistant, Mr. Glasser, were taken up by him and discussed with me and I knew all the orders that were rendered either before or shortly after they were rendered, and they had my approval" (R. 859).

Mr. Dwight Green, now Governor, when United States District Attorney, assigned Glasser to the legal case cal-

endar, a major call in return for Glasser's conscientious services when he first went into that office (R. 914).

Glasser's forfeiture suit against the McHenry Farm was mentioned as an achievement in the Attorney General's report for the year ending June 30, 1938, Page 93.

When Glasser resigned, the then United States District Attorney said, "I want to compliment you, that after four years of handling the hottest calls of the office you were able to have such a record" (R. 944).

The charge against Glasser, a member of the bar of this Court, is serious, involving as it does the disbarment from his profession, in addition to the other penalties. As against the proposition that the charge must be proven beyond any reasonable doubt, the prosecution is compelled to admit "no single case and no single incident compel the conclusion of Glasser's guilt" (Government Brief, page 31).

Not only has the charge failed as to Glasser for want of any "case" or "incident," but Glasser's record and the approval of it by the Judges and his superiors in office require a reversal of the conviction where the safeguards long judicially declared have been so flagrantly disregarded in this case.

Respectfully submitted,

RALPH M. SNYDER,
JOHN ELLIOTT BYRNE,
PAUL H. MOORE,
DANIEL A. CAREY,
JAMES A. HOWELL,
OPAL L. BUNN,
DANA R. SIMPSON,

Amici Curiae.



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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940

~~No. 7-077~~ 31
No.

NORTON I. KRETSKE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT, AND BRIEF IN SUPPORT
THEREOF.**

✓ EDWARD M. KEATING,
10 S. La Salle St.,
Chicago, Illinois,

JOSEPH R. ROACH,
Of Counsel.

INDEX.

Petition:	PAGE
Petition	1
Summary statement of the matter involved.....	2
The testimony	3
Reasons relied upon for allowance of the writ....	3
Brief in Support of Petition:	
Opinions below	11
Jurisdiction	12
Statement of the case.....	12
Specification of errors.....	12
Summary of the argument.....	13
Argument	20
Conclusion	49
Appendix	51

CITATIONS.

Adler v. U. S., 182 Fed. 464, 472 (C. C. A. 5).....	16
Alford v. U. S., 282 U. S. 687, 75 L. Ed. 624.....	15
Anderson v. U. S., 268 Fed. 65 (C. C. A. 9).....	14
Asgill v. U. S., 60 Fed. 776.....	15, 18
Bartlett v. U. S., 106 Fed. 884 (C. C. A. 8).....	14
Beck v. U. S., 33 Fed. (2d) 107 (C. C. A. 8).....	14
Berger v. U. S., 295 U. S. 78, 79 L. Ed. 78.....	17
Boykin v. U. S., 11 Fed. (2d) 484 (C. C. A. 5).....	14
Brady v. U. S., 39 Fed. (2d) 312, 314 (C. C. A. 8)....	18
Bratton v. U. S., 73 Fed. (2d) 795 (C. C. A. 10).....	14
Brenner v. U. S., 260 Fed. 636 (C. C. A. 2).....	14

	PAGE
C. M. Spring Drug Co. v. U. S., 12 Fed. (2d) 852....	19
Collenger v. U. S., 50 Fed. (2d) 345, 350, 351 (C. C. A. 7)	15
Collins v. Commonwealth, 15 Ky. Law Rep. 691, 693..	18
Collins v. U. S., 253 Fed. 609 (C. C. A. 9).....	14
Connley v. U. S., 46 Fed. (2d) 53, 54, 56 (C. C. A. 9)	17
Cook v. U. S., 138 U. S. 157, 184, 34 L. Ed. 908.....	18, 47
Crowley v. U. S., 194 U. S. 461, 48 L. Ed. 1075.....	13
Dalton v. Commonwealth, 226 Ky. Rep. 127, 130, 131	18
District of Columbia v. Clawans, 300 U. S. 616, 81 L. Ed. 843.....	15
Fletcher v. Commonwealth, 26 Ky. Law Rep. 1157....	18
Fontana v. U. S., 262 Fed. 283 (C. C. A. 8).....	14
Frantz v. U. S., 62 Fed. (2d) 737, 739 (C. C. A. 6)....	16
Gideon v. U. S., 52 Fed. (2d) 427 (C. C. A. 8).....	16
Gilmer v. Higley, 110 U. S. 47, 28 L. Ed. 62.....	15
Glover v. U. S., 46 Fed. (2d) 53, 54, 56 (C. C. A. 9)..	17
Greenbaum v. U. S., 80 Fed. (2d) 113, 125, 126, 127 (C. C. A. 9).....	18
Harrold v. Oklahoma, 169 Fed. 47 (C. C. A. 8)...15, 16, 17	
Hass v. U. S., 93 Fed. (2d) 427, 436 (C. C. A. 8)....	18
Haussener v. U. S., 4 Fed. (2d) 884, 887 (C. C. A. 8)..	16
Havener v. U. S., 9 Fed. (2d) 357 (C. C. A. 8).....	16
Heard v. U. S., 255 Fed. 829 (C. C. A. 8).....	15
Hernsley v. Commonwealth (Ky. Court of Appeals), 31 Ky. Law Rep. 386.....	16
Holt v. U. S., 94 Fed. (2d) 90, 94 (C. C. A. 10).....	19
Hunter v. U. S., 62 Fed. (2d) 217, 220 (C. C. A. 5)..	16
Larkin v. U. S., 107 Fed. 897 (C. C. A. 7).....	14
Lawrence v. U. S., 18 Fed. (2d) 407 (C. C. A. 8).....	16
Logan v. U. S., 144 U. S. 263, 36 L. Ed. 429.....	8, 48

	PAGE
McKenna v. U. S., 127 Fed. 88.....	14
McNutt v. U. S., 267 Fed. 671 (C. C. A. 8).....	17
Middleton v. U. S., 49 Fed. (2d) 538 (C. C. A. 8)....	16
Miller v. U. S., 136 Fed. 581 (C. C. A. 7).....	13
Minner v. U. S., 57 Fed. (2d) 506, 511, 512 (C. C. A. 10)	15
Moyer v. U. S., 78 Fed. (2d) 624 (C. C. A. 9).....	15
Naftzger v. U. S., 200 Fed. 494, 499, 500 (C. C. A. 8)	18
Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1075....	13, 14
Paddock v. U. S., 79 Fed. (2d) 872, 873, 874 (C. C. A. 9)	18
People v. Adams, 76 Cal. App. 178, 244 Pac. 106....	16
People v. Barberi, 149 N. Y. 256, 275, 276.....	17
People v. Cunningham, 195 Ill. 550, 63 N. E. 517....	17
People v. Egan, 331 Ill. 489, 163 N. E. 357.....	17
People v. Fleming, 166 Cal. 359, 381, 136 Pac. 291, 302	16
People v. Geidras, 338 Ill. 340.....	16
People v. Harper, 145 Mich. 402, 108 N. W. 689.....	18
People v. Mack, 267 Ill. 481.....	13, 14
People v. Newman, 261 Ill. 11, 103 N. E. 489.....	16
People v. Quinn, 295 Pac. 1043.....	16
People v. Rongetti, 331 Ill. 581, 163 N. E. 373.....	17
Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6).....	17, 18
Pierre v. Louisiana, 306 U. S. 354, 83 L. Ed. 757....	13, 14
Rainey v. People, 8 Ill. 71.....	13
Renigar v. U. S., 172 Fed. 647.....	13
Rutherford v. U. S., 258 Fed. 855 (C. C. A. 2).....	17
State v. Borri, 199 S. W. 136, 138 (Mo.).....	16
State v. Cannon, 66 Mo. 116.....	16
State v. Denis, 19 La. Ann. 119.....	18
State v. Nugent, 116 La. Rep. 99.....	18
State v. Wright, 4 La. Ann. 589, 590, 591.....	18

	PAGE
Terzo v. U. S., 9 Fed. (2d) 357 (C. C. A. 8).....	16
Throckmorton v. Holt, 180 U. S. 552, 55 L. Ed. 663..	19
Tucker v. U. S., 5 Fed. (2d) 818, 822, 823, 824 (C. C. A. 8)	15
U. S. v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588....	13
U. S. v. Dressler, 112 Fed. (2d) Adv. Sheets 972 (C. C. A. 7).....	18
U. S. v. Rhodes, 212 Fed. (2d) 77 (C. C. A. 10)....	14
Waldron v. Waldron, 156 U. S. 361, 39 L. Ed. 453....	19
White v. U. S., 67 Fed. (2d) 77 (C. C. A. 10).....	14
Williams v. Commonwealth, 90 Ky. Rep. 596.....	18
Williams v. U. S., 93 Fed. (2d) 686 (C. C. A. 9).....	16
Wilson v. U. S., 4 Fed. (2d) 888 (C. C. A. 8).....	16
Yundt v. People, 65 Ill: 373.....	13

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No.

NORTON I. KRETSKE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT, AND BRIEF IN SUPPORT
THEREOF.**

*To the Honorable Chief Justice of the United States and
the Associate Justices of the Supreme Court of the
United States:*

Norton I. Kretske, petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in the above cause, affirming the judgment of the District Court for the Northern District of Illinois, and respectfully shows:

(Wherever the word "petitioner" is used herein, it will be deemed to refer to the defendant Norton I. Kretske in the District Court of the United States for the Northern District of Illinois, Eastern Division, the appellant in the United States Circuit Court of Appeals for the Seventh Circuit, and the petitioner here. Wherever the term "instant court" is used, it will be deemed to refer to the United States Circuit Court of Appeals for the Seventh Circuit.)

I.

Summary statement of the matter involved.

Judgment of conviction was rendered against petitioner, Norton I. Kretske, on May 17, 1940, by the District Court of the Northern District of Illinois, Eastern Division, adjudging him guilty of the crime of conspiracy to defraud the United States. He was named in the indictment with Daniel A. Glasser, Alfred E. Roth, Anthony Horton and Louis Kaplan. During part of the time covered by the indictment petitioner Kretske was an Assistant District Attorney for said District. The said Glasser during all of said time was an Assistant District Attorney for said District. The petitioner was sentenced to be confined for a term of 14 months in a Federal penitentiary. All the other defendants likewise were convicted and at the same time sentenced, the defendant Glasser receiving a sentence of 14 months in a Federal penitentiary, the defendant Kaplan received the same sentence, the defendant Horton was sentenced to a term of one year, to be served on probation, and the defendant Roth to a fine of \$500.00. Neither Horton nor Kaplan appealed from this judgment. Petitioner herein, with Glasser and Roth, appealed to the Circuit Court of Appeals for the Seventh Circuit, where the judgment imposing the sentences was

affirmed which judgment and opinion appear at p. 1117 of the record. A rehearing was refused.

THE TESTIMONY.

The record of the testimony is voluminous, consisting of approximately 4,200 pages. The exhibits consist of at least 2,500 pages. While all the briefs upon appeal made efforts to present this evidence in an accurate outline, the Circuit Court of Appeals did not make any attempt to set out anything like a complete outline of the evidence. As petitioner does not contend that this evidence, as accepted by the jury, does not present a jury question, no effort will be, nor can be, made within the requirements of the Rules of this Court, to present the whole of this evidence in outline. At appropriate places an attempt will be made to state from the record such facts as will present the several questions sought to be presented. In this connection, the reasons relied upon will be set forth. Also it will be attempted to show how the questions advanced upon the record as justifying the review prayed for do in fact justify it. It will be further attempted to show that the determination of each of these several questions is necessary to a complete determination of the case presented by this petition.

II.

Reasons relied upon for allowance of the writ.

1. The first reason relied upon is that the petitioner was denied due process of law because the grand jury which returned the indictment against him was illegally constituted and void, because of the intentional, total exclusion of the female sex from the jury box from which

grand jurors were drawn, the state law making it mandatory that women be placed on the jury lists.

This question was raised by motion to quash before plea (Rec. 141), and denied on Government's motion to strike. (Rec. 151.)

2. The second reason relied upon is that petitioner was illegally put to trial upon a record which shows that the indictment, which is the basis of the charge against him, was not returned into open court. (Rec. 39.)

This proceeding was challenged by a motion to quash the indictment, which motion in full appears at Rec. 141-142, to which proceeding the Government filed a motion to strike, which was sustained. (Rec. 151.) This ruling presents the question of a conflict of decisions between the instant court and the Court of Appeals for the Fourth Circuit. (See Br., p. 13.) The question thus presented justifies the issuance of the writ thus prayed for (hereinafter called the writ), and the determination of this question is necessary to a proper determination of this case, coupled with the further assertion that the Court, in overruling the motion to quash the indictment upon this particular ground decided an important question of Federal law which has not been, and should be, settled by this Court.

3. The third reason relied upon is that petitioner was put to trial on an indictment which failed to inform him of the nature and cause of the accusation against him, in contravention of the Sixth Amendment to the Constitution of the United States, against the demurrer to the indictment asserting particularly these specifications:

a—The count upon which he was convicted failed to charge any crime against the laws of the United States.

b—This count was based upon the conclusions of the

pleader, and failed to set forth with reasonable certainty any facts from which said conclusions could be drawn.

c—This count was so vague, indefinite, uncertain and ambiguous that it failed to allege the ultimate and issuable facts of a conspiracy.

(This count of the indictment may be found at Rec. 22-37, and the demurrer thereto is to be found at Rec. 57-58. See Br., p. 13.)

This ruling is probably in conflict with the applicable decisions of the Supreme Court of the United States, in construing the allegations in the indictment to the end that it may conform with the provisions of the Sixth Amendment to the Constitution of the United States. (See Br., p. 13.)

4. The fourth reason relied upon is that there was a total, systematic exclusion from the jury box of females who were not members of a private League of Women Voters, and who had not, as members of this League, attended certain jury classes maintained for the purpose of giving instructions to potential jurors, in which lectures presented the views of the prosecution, which excluded persons otherwise possessed of the requisite qualifications for jury service. This was a denial of the constitutional right of trial by an impartial jury, in violation of the Fifth Amendment to the Constitution of the United States. (Rec. 103-104; see Br., p. 14.)

5. The fifth reason relied upon is that the admission in evidence of Government's Exhibits 81A and 113, severally, containing hearsay and highly inflammatory statements, is a denial of the right of confrontation with the witnesses whose statements appeared in said Exhibits. Rec. 533 shows the introduction of Government's Exhibit 81A and Rec. 532 shows the introduction of Government's Exhibit 113.

This ruling is probably in conflict with the decisions of the Supreme Court of the United States.

6. The sixth reason relied upon is that the petitioner was denied a fair and impartial trial, and denied the benefit of the presumption of innocence, by the activities of the trial judge.

The trial judge in questioning witnesses was not calmly judicial, dispassionate and impartial. He participated in the trial most actively, and not only failed sedulously to avoid all appearance of advocacy on questions ultimately for the jury, but by his activities conveyed to the jury his conclusions on these subjects. He further by his cross-examination of witnesses deprived petitioner of a fair and impartial trial. (Rec. 241, 307-310, 545, 816-817, 850-851, 869-870, 873, 941, 943, 1030, 243, 297, 348-349, 536, 232, 294, 602, 615, 625, 627-628, 644-646, 270, 273, 274, 196, 659, 990-991, 1000-1002.)

The question presents a conflict in the decisions of the instant Court on the one hand, and the decisions of the Circuit Courts of Appeal of the Fifth, Sixth and Ninth Circuits on the other hand. (See Br., pp. 16, 20.)

7. The seventh reason relied upon is that the judge imposed such a limitation of the right of cross-examination as (a) to fatally prejudice petitioner, and (b) to constitute a denial of due process of law. (Testimony of Campbell, Rec. 1041-1042; Testimony of Swanson, Rec. 237; Testimony of Dewes, Rec. 554-555.)

This decision is probably in conflict with the applicable decisions of the Court of Appeals for the Eighth Circuit, and with the applicable decisions of this Court. (See Br., p. 15.)

8. The eighth reason relied upon is that it was reversible error to examine the witnesses for the defendants beyond the time and subject matter embraced in the direct

examination, the effect and purpose of the cross-examination being the showing of matter against the defendants, which, if proved at all, should have been proved by the Government as part of its case in chief; the impeachment of the witnesses, showing commission of crimes not felonious nor involving moral turpitude, and for the purpose of adducing facts favorable to the Government, without the Government making the person a witness for itself, touching upon the matters upon which cross-examination was conducted. (See Reason No. 6 herein, and the Record set out in support thereof, which shows such cross-examination conducted not by the prosecuting attorney, but by the judge. (See Br., p. 15.)

9. The ninth reason relied upon is that the prosecutor, (a) by leading questions persistently put testimony into the mouths of accomplice witnesses vital to the prosecution, and fatal to the defense, and thus substituted his testimony for that of an accomplice witness; (b) upon cross-examination repeatedly put to a defendant while on the stand, absolutely unnecessarily, the same question in regard to a material matter; (c) after he went partially into a matter on examination in chief, the judge refused, upon the objection of the prosecutor, to permit the defendant to inquire further into the matter; (d) after he had turned over to the defendant witnesses for cross-examination, on re-examination did not confine himself exclusively to the matter developed in cross-examination; (e) was permitted to continuously introduce evidence out of the usual order without showing good and exceptional cause for doing so; and (f) upon request he refused the right of the defendant Glaszer to examine a material Government document which was relied upon by the Government, and which was in the sole possession of the Government. (Rec. 206, 520-523, 636, 660, 661, 289, 979, 982-983, 1034-1036.)

This decision is in conflict with the decisions of the Circuit Court of Appeals for the Eighth Circuit, and the court has so far departed from the accepted and usual course of procedure, and so far sanctioned such departure, as to call for the exercise of this Court's power of revision. (See Br., p. 15.)

10. The tenth reason relied upon is that it was reversible error (a) for the Court to admit in evidence a prejudicial act disconnected with the conspiracy charged; (b) to admit in evidence against the defendants a highly prejudicial statement, act or declaration made by another alleged conspirator after the determination of the alleged conspiracy; and (c) to exclude important evidence operating in behalf of the defendants. (Rec. 680-689, 923-924.)

These rulings give rise to a conflict with the decisions of the Second, Third, Sixth, Eighth, Ninth and Tenth Circuit Courts of Appeal, and the Supreme Court of the United States. (See Br., pp. 18, 44.)

11. While all these rulings and conduct were not directed immediately against the petitioner, in view of the fact that the sole charge on which he was convicted was that of conspiracy, upon the authority of this Court, such are available to him as prejudicial error committed against him.

Logan v. U. S., 144 U. S. 263, 309.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals for the Seventh Circuit had in the case numbered and entitled on its docket, No. 7316, Norton I. Kretske, Appellant, *vs.*

United States of America, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals for the Seventh Circuit be reversed by the court, and for such further relief as to this court may seem proper.

Dated: February 26, 1941.

NORTON I. KRETSKE,
Petitioner.

By EDWARD M. KEATING.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No.

NORTON I. KRETSKE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI.**

I.

Opinions of courts below.

The District Court for the Northern District of Illinois, Eastern Division, did not deliver a written opinion. The opinion of the instant court is reported in 116 Fed. (2d) 690, under the title of *Norton I. Kretske v. United States of America*, and is to be found at p. 1117 of the Record.

II.

Jurisdiction.

The date of the judgment of the instant court sought to be reviewed is December 13, 1940. A petition for rehearing was filed, and denied on January 13, 1941. The statutory provision which is believed to sustain the jurisdiction of this Court is Sec. 347(a), Title 28, United States Code (Judicial Code Sec. 240(a), amended by Act of February 13, 1925).

The nature of the rulings and the facts pointed out in the Record as stated on pp 3-8 of the preceding petition are such as to bring the case within the jurisdiction of the provision relied upon. This statement is incorporated herein by reference, to save repetition here.

III.

Statement of the case.

This has already been stated in the preceding petition under III (p. 2), and is hereby adopted and made a part of this brief.

IV.

Specification of errors.

For brevity, the allegations of error contained and stated under "Reasons Relied Upon for Allowance of this Writ", in the preceding petition (pp. 3-8) are hereby presented as the assignments of error herein and incorporated at this point, to the same extent and for all purposes as though fully expressed here.

V.

Summary of the argument.

A.

The Court erred in denying the motion to quash the indictment.

1. The grand jury was illegally constituted because women were systematically excluded therefrom. (Rec. 212.)

Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1075.

Pierre v. Louisiana, 306 U. S. 354, 83 L. Ed. 757.

Crowley v. U. S., 194 U. S. 461, 48 L. Ed. 1075.

People v. Mack, 267 Ill. 481.

2. The indictment was not properly returned in open court.

3. The indictment was filed without the proper order of court directing the receiving and filing of said indictment.

Renigar v. U. S., 172 Fed. 647.

Yundt v. People, 65 Ill. 373.

Rainey v. People, 8 Ill. 71.

B.

The Court erred in overruling the demurrer of the appellant, because:

1. The indictment is vague, indefinite and uncertain, and did not advise the appellant of the charge which he had to meet with reasonable particularity as to persons, time, places and circumstances, and is therefore fatally defective.

U. S. v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588.

Miller v. U. S., 136 Fed. 581 (C. C. A. 7).

Beck v. U. S., 33 Fed. (2d) 107 (C. C. A. 8).
Boykin v. U. S., 11 Fed. (2d) 484 (C. C. A. 5).
Anderson v. U. S., 269 Fed. 65 (C. C. A. 9).
Brenner v. U. S., 260 Fed. 636 (C. C. A. 2).
Fontana v. U. S., 262 Fed. 283 (C. C. A. 8).
McKenna v. U. S., 127 Fed. 88.
Bartlett v. U. S., 106 Fed. 884 (C. C. A. 8).
Pierre v. U. S., 275 Fed. 352 (C. C. A. 8).
Collins v. U. S., 253 Fed. 609 (C. C. A. 9).

2. The indictment is repugnant and inconsistent.

Larkin v. U. S., 107 Fed. 897 (C. C. A. 7).
White v. U. S., 67 Fed. (2d) 77 (C. C. A. 10).
U. S. v. Rhodes, 212 Fed. 515 (D. C. Ala.).

3. The indictment leaves a doubt in the mind of the Court concerning the offense intended to be charged and therefore is fatally defective for uncertainty.

Bratton v. U. S., 73 Fed. (2d) 795 (C. C. A. 10).

C.

There was error in the total, systematic exclusion from the jury box of females who were not members of a private League of Women Voters, and who had not, as members of this League, attended certain jury classes maintained for the purpose of giving instructions to potential jurors, in which lectures presented the views of the prosecution, which excluded persons otherwise possessed of the requisite qualifications for jury service.

Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1075.
Pierre v. Louisiana, 306 U. S. 354, 83 L. Ed. 757.
People v. Mack, 267 Ill. 481.

D.

The defendants were denied a full cross-examination of witnesses produced against them upon the subject matter of their respective examinations in chief. They were not permitted to substantially exercise this right to their definite prejudice.

Alford v. U. S., 282 U. S. 687, 75 L. Ed. 624.

District of Columbia v. Clawans, 300 U. S. 616, 81 L. Ed. 843.

Gilmer v. Higley, 110 U. S. 47, 28 L. Ed. 62.

Moyer v. U. S., 78 Fed. (2d) 624 (C. C. A. 9).

Asgill v. U. S., 60 Fed. (2d) 776 (C. C. A. 4).

Minner v. U. S., 57 Fed. (2d) 506, 511, 512 (C. C. A. 10).

Heard v. U. S., 255 Fed. 829 (C. C. A. 8).

Harrold v. Oklahoma, 169 Fed. 47 (C. C. A. 8).

Collenger v. U. S., 50 Fed. (2d) 345, 350, 351 (C. C. A. 7).

E.

It was reversible error to cross-examine the witnesses for the defendants beyond the time and subject matter embraced by the direct examination, and the cross-examination's purpose and effect the showing of matter against the defendants which, if proved at all, should have been proved by the Government as part of its case in chief, the impeachment of the witnesses without showing the commission of crime or other impeaching facts, and adducing facts favorable to the Government, without making the witness one for the Government, touching upon the matters upon which cross-examination was conducted.

Tucker v. U. S., 5 Fed. (2d) 818, 822, 823, 824 (C. C. A. 8).

- Wilson v. U. S.*, 4 Fed. (2d) 888 (C. C. A. 8).
Terzo v. U. S., 9 Fed. (2d) 357 (C. C. A. 8).
Havener v. U. S., 15 Fed. (2d) 503 (C. C. A. 8).
Gideon v. U. S., 52 Fed. (2d) 427 (C. C. A. 8).
Haussener v. U. S., 4 Fed. (2d) 884, 887 (C. C. A. 8).
Lawrence v. U. S., 18 Fed. (2d) 407 (C. C. A. 8).
Middleton v. U. S., 49 Fed. (2d) 538 (C. C. A. 8).
Harrold v. Oklahoma, 169 Fed. 47, 52, 53 (C. C. A. 8).
People v. Newman, 261 Ill. 11, 103 N. E. 489.
People v. Geidras, 338 Ill. 340.
State v. Cannon, 66 Mo. 116.
People v. Adams, 76 Cal. App. 178, 244 Pac. 106.
People v. Fleming, 166 Cal. 359, 381, 136 Pac. 291, 302.
Hernsley v. Commonwealth (Ky. Court of Appeals), 31 Ky. Law Rep. 386.
State v. Borri, 199 S. W. 136, 138 (Mo.).
People v. Quinn, 295 Pac. 1043.

F.

The trial judge took a very active part in the trial of this cause. He questioned witnesses, cross-examined witnesses, and by his attitude and conduct clearly indicated his belief in the guilt of the defendants. In questioning witnesses he was not calmly judicial, dispassionate, and impartial, and his conduct, taken as a whole, presented all the characteristics of advocacy. This, we contend, is reversible error.

- Frantz v. U. S.*, 62 Fed. (2d) 737, 739 (C. C. A. 6).
Hunter v. U. S., 62 Fed. (2d) 217, 220 (C. C. A. 5).
Adler v. U. S., 132 Fed. 464, 472 (C. C. A. 5).
Williams v. U. S., 93 Fed. (2d) 686 (C. C. A. 9).

Connley v. U. S., 46 Fed. (2d) 53, 54, 56 (C. C. A. 9).

Glover v. U. S., 46 Fed. (2d) 53, 54, 56 (C. C. A. 9).

McNutt v. U. S., 267 Fed. 671 (C. C. A. 8).

Rutherford v. U. S., 258 Fed. 855 (C. C. A. 2).

People v. Egan, 331 Ill. 489, 163 N. E. 357.

People v. Rongetti, 331 Ill. 581, 163 N. E. 373.

People v. Cunningham, 195 Ill. 550, 63 N. E. 517.

G.

It was reversible error for the prosecutor to resort to prejudicially improper methods to bring about a conviction.

1. He repeatedly put to witnesses against the defendants the same question in regard to material matters.

2. He went into matters partially upon examination in chief and by his objections prevented the defendants from properly examining into the same matters on cross-examination.

3. He repeatedly re-examined witnesses far beyond the matters touched upon in cross-examination, and persistently did this.

4. He repeatedly introduced evidence out of its usual order without showing good and exceptional causes for doing so.

5. He refused the defendant Glasser the right to examine a material document in his possession, which was relied upon as evidence against him.

Berger v. U. S., 295 U. S. 78, 79 L. Ed. 78.

Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6).

People v. Barberi, 149 N. Y. 256, 275, 276.

Harrold v. Oklahoma, 169 Fed. (2d) 47 (C. C. A. 8).

State v. Nugent, 116 La. Rep. 99.

State v. Denis, 19 La. Ann. 119.

State v. Wright, 4 La. Ann. 589, 590, 591.

Williams v. Commonwealth, 90 Ky. Rep. 596.

Dalton v. Commonwealth, 226 Ky. Rep. 127, 130, 131.

Collins v. Commonwealth, 15 Ky. Law Rep. 691, 693.

Fletcher v. Commonwealth, 26 Ky. Law Rep. 1157.

People v. Harper, 145 Mich. 402, 108 N. W. 689.

Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6).

Asgill v. U. S., 60 Fed. 776.

H.

1. The Court erred in admitting and permitting to be read to the jury Exhibits Nos. 81A and 113 as evidence against the defendant Kaplan, and holding that it was for the jury to determine if they were evidence against anyone else. This evidence was irrelevant, prejudicial and hearsay evidence in documentary form, and the error was properly saved by a motion to withdraw a juror.

Cook v. U. S., 138 U. S. 157, 184, 34 L. Ed. 908, 913.

U. S. v. Dressler, 112 Fed. (2d) Adv. Sheets 972 (C. C. A. 7).

Hass v. U. S., 93 Fed. (2d) 427, 436 (C. C. A. 8).

Greenbaum v. U. S., 80 Fed. (2d) 113, 125, 126, 127 (C. C. A. 9).

Paddock v. U. S., 79 Fed. (2d) 872, 873, 874 (C. C. A. 9).

Brady v. U. S., 39 Fed. (2d) 312, 314 (C. C. A. 8).

Naftzger v. U. S., 200 Fed. 494, 499, 500 (C. C. A. 8).

Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6).

2. This error could not be cured by any subsequent instructions to the jury.

Waldron v. Waldron, 156 U. S. 361, 39 L. Ed. 453.

Throckmorton v. Holt, 180 U. S. 552, 55 L. Ed. 663.

Holt v. U. S., 94 Fed. (2d) 90, 94 (C. C. A. 10).

C. M. Spring Drug Co. v. U. S., 12 Fed. (2d) 852.

ARGUMENT.

As to Points A, B, C, D and E, covered in the foregoing Summary of Argument, it is thought that they have been sufficiently covered there. In view of the limitations of space, in the following pages an attempt will be made only to further elucidate Points F, G and H.

F.

The Judge's conduct made the basis of the foregoing assignments of error as it applies to them may be thus summarized:

1. The Judge interfered with the re-direct examination of Elmer Swanson, a Government witness, and developed by answer to his question that the witness had heard that the defendant Horton had previously taken care of, fixed and manipulated cases, and that the witness thought Horton could similarly handle the case in which he was interested. (Rec. 241.) A motion was made to strike the answer which this question elicited, but it was overruled.

2. The Judge examined Frank Hodorowicz, a co-conspirator, witness for the Government, and developed that Hodorowicz had talked to one Frank Miller, a stranger to the indictment and likewise to any legal connection with the evidence, and developed that Miller told the witness he could "take care" of his case for \$800.00, which witness paid. Witness did not know whether Miller used the money or not. That this Miller was in the bootlegging business and not a lawyer. (Rec. 307-308.) After further questioning by the Assistant District Attorney, the Judge again questioned the witness, reverting to the Miller inci-

dent, and entered into the details of that transaction, and re-emphasized it by repeated questions. (Rec. 309-310.)

3. During the cross-examination of the witness Dewes, the Judge made the witness repeat his testimony to the effect that the defendant Kretske (petitioner here) had resigned under pressure. (Rec. 545.) The Judge interfered with the cross-examination of Dewes in such a manner as to deprive the defendants of the right to a free and unrestricted cross-examination.

4. The Judge interrupted the cross-examination of Kretske by developing the fact that petitioner thought the trial of alcohol cases in the Federal Court involved some difficulty, and stated positively that there is nothing difficult in the trial of any of those cases, thus indicating his disbelief in the testimony of this witness. (Rec. 816-817.)

5. The Judge interrupted the direct examination of the defendant Roth, cross-examined him himself, and by the nature of his questions and his attitude, clearly indicated a disbelief of the testimony by Roth. Roth stated to Campbell that an agent named Bailey was going to get a number of United States Attorneys, lawyers, and judges in trouble, and that he, Roth, had heard Campbell's name mentioned. The Judge then proceeded to cross-examine the defendant vigorously as to the source of his information and by the nature of his questions indicated an utter disbelief in the statements made by Roth. (Rec. 850-851.)

At pages 869-870 of the Record, the Judge cross-examined the witness-defendant Alfred E. Roth, beyond the scope of his judicial authority in regard to a record on appeal in a farm libel case that bore a very remote, if any, relation to the issue. At 873, where Roth was being examined as to matters unrelated to his direct examination, his counsel objected on such grounds, to which objection the Judge retorted, "This is cross-examination."

6. Federal Judge Michael L. Igoe, witness for the defense, was asked by Assistant District Attorney Ward if he knew many of the defendants who had been arrested and prosecuted by the Government, to which Judge Igoe answered he did not know certain of them. Then the Assistant District Attorney said, "That's the point; I say you didn't know them, but Mr. Glasser does know them." A motion was made to have this statement stricken. This the judge refused to do. (Rec. 908.)

7. The Judge cross-examined the defendant Glasser in regard to a certain Nick Abesketes as follows:

"The Court: Did you know at that time that Nick Abesketes was under indictment in the Eastern and Western Districts of Wisconsin?

A. No, sir.

Q. Did you make any inquiry?

A. No, sir; you see, my job was strictly to prosecute.

Q. You were interested in getting Nick Abesketes?

A. Yes, sir." (Rec. 941.)

8. At page 943 of the Record, the Judge re-emphasized this matter as follows: I think my impression was that there were two indictments pending in Wisconsin against Nick Abesketes on February 25, 1938. I will ask the District Attorney's Office to check with the Alcohol Division sometime during the day, to make sure about it.

9. At page 1030, the Judge said: At my request, the Government has furnished me with this. Let the record show that Nick Abesketes was indicted in the Western District of Wisconsin on January 27, 1936, and that he was indicted in the Eastern District of Wisconsin on July 30, 1938. * * * To the indictment in the Western District he pled guilty and was sentenced. * * * After that the indictment in the Eastern District was dismissed. It covers the same subject. I know that for a fact. * * * I happen to know all about Nick Abesketes.

Here the Judge himself put into the record these matters. They had little or no bearing upon the case, even within the wide scope permitted by the indictment. It seems a clear case of the Judge conducting the prosecution.

10. The Government witness Del Rocco was under examination touching the money he is alleged to have given the defendant Horton to fix pending cases. The Judge interrupted and asked the witness the following questions:

"The Court: Did he tell you how he would use this \$500.00?

A. That he had to give it to the boss.

Q. Did he tell you who the boss was?

A. He said "the redhead". That he would only get a couple of dollars out of it for his end for going out there, very little." (Rec. 243.)

11. During the examination of Government's witness Frank Hodorowicz (Rec. 297), the Judge, addressing himself to the witness said:

"Q. He said if Pete took ownership of the still, you would have the case discharged?

A. He said it cost \$800.00, so that night I came over and went to the north side some place. He said he had to deliver the money to Red, so we went to the north side, and he went in some lobby there and I went out in the corner to the saloon. He came back. He said everything is O. K. He said everything is taken care of for tomorrow morning.

The Court: Had you paid the money before you came back?

A. Yes, sir.

The Witness: The next morning Pete and Clem Dowiat were discharged. That was the evening of September 23.

The Court: Do you know?

A. Yes, sir.

Q. Whom did he mean when he referred to Red?

A. Glasser.

Q. The defendant in the case?

A. Yes, sir.

Q. You actually paid Kretske \$800.00?

A. Yes.

Q. How did you pay it, in currency?

A. Yes, in cash."

12. During the examination of Government witness Anthony Hodorowicz (Rec. 348-349) the Judge examined the witness in regard to what facts were brought before the United States Commissioner who was hearing the charge against the witness. He had the witness state that a full disclosure of the facts in the case was not made before Judge Woodward, before whom the case was heard. Witness was asked by the Judge whether Judge Woodward asked the witness any questions, whether any lawyer asked him any questions, and especially whether Mr. Glasser asked him any questions. The Judge then said:

"So you don't know. Your recollection is that there was not a complete disclosure of all the facts that connected you with that case before the judge?"

Upon the witness being asked by one of counsel for the defense whether he understood the term used by the Judge, he stated that he did not, to which the Judge made answer:

"I will ask you this. Did your lawyer, or Mr. Glasser, or anyone in your presence, in the judge's, make any statement to the judge about your conduct in relation to the still and the charge in the indictment?

A. No."

This witness then proceeded to state on cross-examination that there were no facts connecting him with the still, and there is no fact that he could have told in regard to any connection with the still. Counsel's final question along this line was:

"If they told the truth about you, all they could

state was that you were in that neighborhood, and that they arrested you near the still, is that right?

A. Yes.

The Court: Did you hear them tell the judge that?

A. No, I didn't." (Rec. 348-349.)

13. After the Government agent and witness Silvian White had been fully examined, cross-examined, and re-examined, the Judge, for the apparent purpose of rehabilitating this witness conducted the following examination:

"Q. Did you discuss or bring to the attention of Mr. Glasser a copy of that original affidavit?

A. Mr. Glasser had a copy of the original affidavit. I had discussed Mr. Frett's affidavit as well as the affidavit of Alfred Slesur, Cecil Simms, Lester Urbanski, who corroborated Joe Cole, at least in part or some parts of his testimony concerning Kaplan.

Q. If that other statement would correspond to the statement of the other witnesses—

A. That is true.

Q. You say now the statement of Peter W. Frett corresponded in detail with the statement of this other witness?

A. It corresponds in part.

Mr. Stewart: That is what I object to. He hadn't any right to say that.

The Court: Eliminate the word "corroborate"; and we want to know if the statements are alike.

The Witness: Not exactly, no, sir. There is more detail in Joe Cole's statement than in the others.

Q. In Joe Cole's?

A. Yes, sir.

Q. Are there some statements in the Frett affidavit that are similar to the statements in the Cole affidavit?

A. Yes, sir, exactly.

The Court: I think that is sufficient." (Rec. 805.)

14. The Judge took the direct examination away from the Assistant District Attorney of the Government witness Swanson, who had testified that he and others

charged with him had appeared before Judge Woodward, were represented by Roth, and the defendant Glasser represented the Government. They were told by Roth that the case would be continued until a certain day and upon that day the witness and others appeared, the case was continued, and the witness heard no more about it. At page 232:

"The Court: Did you pay a fine or anything of that kind?

A. No, we did not pay fine.

Q. The case just dropped out of mid-air?

A. Well, it dropped out.

Q. How long ago was that?

A. Well, that was in early part of 1938."

15. At Rec. 293-294, the Judge asked Commissioner Walker, who had testified favorably to the conduct of the defendant lawyers, this question:

"Q. Of course, all you observed was their conduct in your court room?

A. Oh, yes, surely."

16. Charles Ellis was a member of the grand jury and was examined, cross-examined and re-examined touching the conduct of the defendant Glasser before the grand jury. The Judge thus interfered with the re-direct examination:

"Q. Let me ask you a question. When Mr. Glasser appeared before the jury did he submit to you a report that he had obtained from any of the agents?

A. No, he had a report with him.

Q. Did he give it to the grand jury to examine?

A. No.

Q. Did he ask this man Cole anything about any interest Mr. Cole may have had in that still?

A. No." (Rec. 602.)

17. May Jerkus, a witness for the Government, was directly examined by the Assistant District. She had been

in defendant Glasser's office, talking about one Girardi, who was furnishing sugar for a still. The woman's husband had been convicted of operating a still. Mrs. Jerkus visited the District Attorney's office with her husband, who was in custody, and Glasser told her in effect that if they would disclose the name of the man who owned the still, her husband would be permitted to go home. At page 615 the Judge then proceeded to cross-examine this witness:

"The Court: Can you describe the appearance of Nick Girardi at that time?

A. He is about as tall as I am and heavy set.

The Court: Heavy set?

A. Heavy set fellow.

Q. What would you say his weight was?

A. I would say it was close to 200 pounds.

Mr. Ward: How tall are you?

A. Five feet, two.

The Court: About how old a man was he?

A. I would judge him to be about 40.

Mr. Ward: But he is the same Nick Girardi that was in the sugar business with Sol Tishman?

A. I know both of them.

Q. All right.

The Court: At the time you saw Mr. Glasser you knew him?

A. Yes, sir.

Q. You knew he was the man that furnished you with the furniture?

Yes, sir.

Q. Did you tell Mr. Glasser who he was?

A. I told him everything.

Q. Oh, you told Mr. Glasser?

A. Yes, sir. I told him just the whole story. How we came in from Oklahoma City and had no furniture and he gave us the furniture if he could put the still in the basement. I told him everything.

Q. You gave him the man's name?

A. Even the man's name."

18. Stanley Slesur, a witness for the Government, was directly examined by the District Attorney. He was at

the time confined in the United States Penitentiary. In the course of this witness' testimony, the Judge said (Rec. 625):

"Listen, what we want here is the truth and nothing but the truth. Do you understand?

A. Yes, sir.

The Court: If you are testifying falsely on this stand, it may be a more serious offense than the one you are here on. We want you to tell the truth and nothing but the truth. If you went to the Tribune for some purpose say so."

The Judge then proceeded to cross-examine the witness as to whether he went to the Tribune Building. Witness said that he went to the Tribune Building to see the defendant Kretske, but only for the purpose of seeking a loan on his house. The Judge proceeded to cross-examine the witness, at page 627 of the Record:

"Q. You stated now, that you called at Mr. Kretske's office in the Tribune Building with reference to the sale of your home, is that right?

A. Yes, sir.

Q. Or to obtain a loan?

A. Yes.

Q. You had a three thousand loan at that time?

A. Four thousand.

Q. What need of money did you have at that particular time?

A. I needed it for my business.

Q. Did you attempt to raise money on your home any other place before you went to Mr. Kretske's office?

A. Couple of real estates.

Q. What real estate office did you call on?

A. On 63rd Street near Kedzie. I couldn't recall the name.

Q. Was Mr. Kretske in the real estate business? Was he operating a real estate office at the time you consulted him?

A. I don't know.

Q. But you went there for that purpose?

A. Yes.

Q. Did you go there to consult him as a lawyer or as a real estate salesman?

A. Well, yes, there was a couple of more fellows, a real estate man and a lawyer.

Q. Did you go to see Mr. Kretske as a real estate salesman or lawyer?

A. We went to see that young fellow and somebody talked about my property at the same time, and I met Mr. Kretske.

Q. How did you happen to find yourself in Mr. Kretske's office?

A. How did I find it?

Q. How did you happen to go to Mr. Kretske's office?

A. I was downstairs and I don't remember that fellow's name and got upstairs to see Mr. Kretske. They told me to. I say what floor is he on, and that fellow, I don't know the name, Judge.

Q. You don't know his name?

A. Yes.

Q. And that is what you went up there for?

A. Yes, that is the truth.

The Court: All right, proceed."

19. Edward Wroblewski, an inmate of the Lewisburg Penitentiary was examined in chief by the Assistant District Attorney. He testified that the defendant Roth was his lawyer in a proceeding by the Government against him. He was asked how he came to retain Roth and said he could not tell. The Judge then proceeded to cross-examine this witness as follows (Rec. 644-646):

"A. I don't remember how I met Mr. Roth.

Q. How many lawyers have you hired in your lifetime?

A. Two.

Q. Who were they?

A. Three.

Q. Who were they?

A. Mr. Bolton, Mr. Roth and Mr. Gutsel.

Q. Did you hire Mr. Roth before you hired the other two?

A. After.

Q. After. Well, you must have some recollection of the circumstances concerning the employment of Mr. Roth. Now, tell us about it.

A. I don't quite understand your question.

Q. You know something about how you happened to hire Mr. Roth. Now tell us about it.

A. Well, I don't know. As I say, I don't remember how I got acquainted with Mr. Roth.

Q. How did you get acquainted with him?

A. I don't remember.

Q. When did you first see him? Where did you first see him?

Q. In his office?

A. Yes.

Q. How did you happen to go to his office?

A. I don't know.

Q. What is that?

A. I don't remember, your Honor.

Q. When was this?

A. After this trial in 1937, I think it was.

Q. In 1937?

A. Yes.

Q. Did somebody take you to his office?

A. I don't remember.

Q. How old are you?

A. Thirty-one.

Q. And what education have you had?

A. Two years high school.

Q. What is that?

A. Two years high school.

Q. And you don't want to tell us now how you got to Mr. Roth's office.

A. Your Honor, I don't remember.

Q. Why don't you remember? Is there any reason why you shouldn't remember?

A. No, no reason. I just don't remember.

Q. Did your brother take you up there?

A. I don't remember.

Q. How old are you now?

A. Past 31.

Q. How old is your brother?

A. Twenty-eight.

Q. You are 31.

A. Yes, your Honor.

Q. Mr. Roth represented you in Indiana?

A. Yes, sir.

Q. For the trial?

A. Yes, sir.

Q. And at that time you were convicted?

A. Yes.

Q. In a trial before the Court and jury?

A. Yes, your Honor.

Q. How much did you pay Mr. Roth?

A. \$250.

Q. \$250. And you don't know how you got to his office?

A. I don't know now how I ever got acquainted.

Q. Nobody recommended him to you?

A. No, sir. I don't remember whether it was a rumor about his name.

Q. What is that?

A. A rumor. I don't remember how I met Mr. Roth." (Rec. 644-646.)

20. The witness Swanson (Rec. 230) testified that Kretske told him that the "heat was on", which the witness interpreted as meaning that it was hot over in the Federal Building.

"The Court: What is that? It was hot over in the Federal Building, or something like that?

Mr. Ward (Assistant District Attorney): That is not climatically speaking; you don't mean that, do you?

The Court: What did you understand that to mean, by the heat was on?

A. Well, the heat was on them.

Q. By that what do you mean?

A. Well, that they were being watched, or something like that."

21. Clem Dowiat was a person who had been proceeded against criminally by the Government. He testified in regard to the procedure in his case before the United States Commissioner. The Judge interrupted the examination to ask the witness what he heard Mr. Glasser

say at the hearing before the Commissioner. (Rec. 270.) Witness knew the defendant Roth. He had gone over to Roth's office with his uncle. He was asked why he stopped on the way at Kretske's office and said he didn't.

Mr. Ward: Doesn't it refresh your recollection if I tell you you stopped at Mr. Kretske's office?

Mr. Stewart: Your Honor, I object to that. We are entitled to the witness' testimony.

The Court: All right, but this witness is a little reluctant. He is rather evasive at times. Objection overruled. He may answer.

The Witness: I don't get it.

Mr. Ward: Would it refresh your recollection if I were to tell you from there you went to Mr. Roth's office?

A. That might have been.

Q. Do you recall being indicted for that offense?

A. No, sir.

Q. What?

A. No, sir."

Examination by the Court (Rec. 273):

"Q. Never heard the word, did you?

A. No, sir.

Q. Never heard of anyone being indicted?

A. Yes, sir.

Q. Sure you did. Don't try to evade and we'll get along faster. Now the Government has a lot of information about your conduct. You might as well answer without trying to evade."

On re-direct examination this witness was asked whether he could recall being before a judge with his uncle and Swanson: He answered yes. The judge then interfered as follows (Rec. 274):

"The Court: Do you remember what court you were in before what Judge?

A. In front of Walker, Commissioner Walker.

The Court: That is the Commissioner?

Mr. Ward: Do you remember being in a court

room similar to this that looked like this room?

A. No, sir.

The Court: Just mention the name of the judge.

Mr. Ward: Judge Woodward, you ask him that.

The Court: Were you in Judge Woodward's court room?

A. No, sir, Walker.

Q. Were you ever in Judge Woodward's court-room?

A. Yes, sir. I was on a different case. You are getting me all mixed up. I don't know if I am coming or going.

Q. Just listen to the question. As far as you are concerned, this is all water over the dam, so you might just as well answer the questions truthfully.

A. Yes, sir."

22. Gordon Morgan, Chief Clerk of the United States Attorney's Office, testified as to the result of a grand jury investigation. Of a certain grand jury in which the defendant Glasser represented the Government, he stated that there were twelve no bills returned. The judge then questioned the witness (Rec. 196):

"Q. That is the total number of cases presented?

A. By Mr. Glasser.

Q. To this grand jury?

A. Yes, sir.

Q. And of the twenty, there were twelve no bills?

A. Yes, sir."

23. William Brantman testified (Rec. 659) for the Government that he had given the defendant Kretske some money for the purpose of influencing the conduct of the defendant Glasser in a case against a third person. Brantman and this third person flatly contradicted each other in material particulars as will afterwards be shown. As the record discloses, Brantman was at all times a willing witness, except insofar as the testimony would be highly prejudicial to him. At all times when it would

injure any of the defendants without injuring himself, he was a most willing witness. Yet, we find this dialogue between the Judge and counsel for one of the defendants:

“Mr. Stewart: (Referring to the testimony of Brantman.) Your Honor, when Mr. Ward puts these convicts on, I don’t object, but I know your Honor would rule that they were possibly a little reluctant, but he is not a reluctant witness.

The Court: The last two answers indicate he was a little reluctant. Objection overruled.” (Rec. 659.)

24. Frank Hodorowicz testified for the Government (Rec. 341) and was by no means hostile, in fact, he showed great energy that in his testimony he could be of the greatest service to the Government and thus benefit himself as a convicted criminal. Counsel for the defendant objected to the District Attorney’s obviously leading the witness in the questions put. The Judge in answer to this objection stated that this witness was in a measure somewhat hostile, and it was proper to lead him at times. “If you can proceed without leading, do so, but if you have to lead, do so.”

25. On cross-examination of the defendant Glasser by the Assistant District Attorney, the collateral matter of what schools Glasser attended was gone into by the examiner. The Judge then took up the cross-examination thus (Rec. 990-991):

“The Court: What education have you had to prepare yourself for the admission to the Bar?

A. I went to De Paul.

Q. How long did you go to De Paul University?

A. I went there, I think about a year or so.

Q. One year. Are you a graduate of high school? What high school did you graduate from?

A. I went to Lane High School.

Q. Did you graduate from high school?

A. No, I didn’t graduate.

Q. How far did you go?

A. Well, I got my credits, you know.

Q. Then you went to De Paul for one year?

A. Yes, sir, then I went to Loyola.

Q. For how long?

A. About a year.

Q. And when you were at De Paul what did you study?

A. Law.

Q. And where else have you studied?

A. I have studied previously in a law office.

Q. In whose law office?

A. I can't think of his name right now.

Q. How long did you study in his office?

A. Oh, I studied in his office—

Mr. Ward: I can't hear you.

A. I studied for a couple of years in his office. I can't think of his name, it does not come to me.

The Court: What were the requirements at the time before you took the Bar examination?

A. I think three years you could have either law school, or study with a lawyer. I had the necessary qualifications.

Q. You took the Bar examination?

A. Yes, sir.

Q. Well, how long did you study in the law office?

A. Oh, I think I studied about two years, I don't remember.

Q. In whose law office did you study?

A. I can't think of the lawyer's name—it will come to me in a little bit. I have it at the tip of my tongue.

Q. Where was the office?

A. I think 69 West Washington Street.

Q. Miss McGarry was your secretary?

A. Yes, sir.

Q. And she made up this personnel record of Daniel D. Glasser?

A. Yes, sir. I didn't look at it at the time at all. I can tell you if there are any other mistakes, I doubt it. It says LL.D. there—

Q. What do you suppose LL.D. means, what is that?

A. There isn't any LL.D., I think there is a J. D. or LL. D.

The Court: It appears from this record he attended Loyola University from 1922 to 1925. Was that true?

A. No, sir.

Q. Did you give that information?

A. No, I didn't give it to her. I don't remember how that came out. Mr. Campbell knew I went to De Paul.

Q. It don't make any difference, you signed this?

A. Yes, sir, I gave it to Mr. Campbell. He knew the truth about it.

Q. I mean you read it before you signed it?

A. I didn't. It was not true. It was not under oath or anything.

Q. It don't make any difference whether under oath. You read it before you signed it, didn't you?

A. I don't remember. I really don't. And Mr. Campbell knew the truth." (Rec. 990-991.)

26. The Judge, beginning at Rec. 1000 and extending to Rec. 1002 thus cross-examined the defendant Glasser:

"Q. Don't you think the Judge wants to know the entire background?

A. No, sir, it is not fair.

Q. Not fair to who?

A. It is not fair to anybody, to the claimant.

Q. I think the court ought to know.

A. Here are the facts—

Q. Don't you think the Judge ought to know about anybody that appears before him?

A. Yes, sir. Leo Vitale was not before Judge Barnes. You see, it is a knocked-down statement.

Q. There was one Chrysler Sedan automobile before Judge Barnes?

A. I was representing the Government in that case. I know now that Mr. Roth had filed an appearance for Rose Vitale. I didn't remember that.

Q. Do you want to tell this Court and Jury you just knew Rose Vitale was represented by Roth before Judge Wilkerson, you heard it in this court room?

A. No, I want to say when I got the Bill of Particulars, I just had it back. That is the first time I

ever remember this case, when I got the Bill of Particulars. I don't remember if Victor Dowd, the Agent for the Alcohol Tax Unit, was there in Court that day before Judge Barnes. I assume he was. He said he was.

Q. And Victor Dowd, after he heard you make the statement to the Court of the libel, said to you, 'Let me take the stand, and I will save that car for the Government of the United States.' And you said, 'Get the Hell out of here.' Did you not?

A. I might have said it, I don't remember. It is possible, I might have. I might have made that answer telling him to get the Hell out of the courtroom. We couldn't have saved the car for the Government. I was prosecuting according to law. A libel is an attempt by the Government to condemn a car which has been seized and forfeited to the Government. They do that because that is the way they can get clear title to the car for the car—if the car is worth more than \$500.00—

Q. Mr. Glasser, will you tell this Court and jury—

A. You don't want me to answer?

Q. All right, go ahead, and answer.

A. The libel law is to the effect after a car is seized, if the car is worth more, if it is seized by the Agents for the Alcohol Tax Unit, it is worth more than \$500.00, the Alcohol Tax Unit has it appraised, they have it appraised by its Appraisal Department, and if it is worth more than \$500.00 they will send it over to the District Attorney's office, so they may file a libel, if the car is worth less than \$500.00—

Q. Aren't you talking about the matter of seizure rather than what a libel is?

A. That is the only way I can tell what a libel is. I don't remember how many cases I handled when I was in the United States Attorney's office, quite a number.

Q. Isn't it a fact, Mr. Glasser, if an automobile is found on the premises where there is also found an unregistered still, that if it is found within the enclosure, and you have got evidence which can establish that the particular automobile found within the enclosure of the unregistered still, was on numerous occasions followed by the Alcohol Tax Unit, and ob-

served and seen cans of alcohol being placed on it, and license number changed on it, and traced to the premises where the still is actually found, do you consider that fairly good evidence that the automobile was being used to defraud the United States Government out of the taxes on alcohol?

A. Yes, sir.

Q. That is what was done in the Vitale case?

A. No, sir, you are showing me a criminal file, and not the civil file, that is not fair. The criminal file is not used in connection with the civil file. I never did. It shouldn't be. They have a special investigation, and special department that works on it, Judge."

G.

The prejudicial acts of the Assistant District Attorney made the basis of the foregoing assignments of error may be thus summarized:

1. Government witness Workman testified (Rec.-209) that he was on probation. He was then asked by the District Attorney whether from the time he was placed on probation to the 31st day of March, 1939, the defendant Glasser ever called him into the office to talk about the case. The Judge asked the Assistant District Attorney what occasion Mr. Glasser would have to call him into the office after that, to which the District Attorney rejoined, "It is merely a circumstance to show interest."

"The Court: Never mind. Objection overruled. He may answer.

The Witness: No, sir."

This question was also put on re-direct examination and was not responsive to any matters touched upon by cross-examination.

2. The Assistant District Attorney put the testimony he desired in the mouth of Elmer Swanson, the

Government witness while testifying on direct examination, in the following manner (Rec. 229):

"A. Well, the case was supposed to be taken care of for \$800.00, and nobody was supposed to go to jail.

Q. Was there something said about \$1,200.00 at this time?

A. Well, the \$800.00 was supposed to be the first payment, and when everything was all over, why the rest of it was supposed to be paid.

Q. Was there \$500.00 in currency paid to Kretske at that time?

A. I think it was \$500.00, if I'm not mistaken.

Q. And the balance was to be \$700.00, is that it?

Mr. Stewart: Well, your honor, we would like to have the witness' testimony and not Mr. Ward's. We object.

The Court: If the witness knows, speak out and tell us what the facts are.

The Witness: A. Well, I think it was \$500.00, and there was a \$700.00 balance, it was \$1,200.00 in all."

3. The Assistant District Attorney re-cross examined and the Judge permitted to re-cross examine the defendant Roth in regard to a subject matter which had been thoroughly covered in previous examinations. An objection was interposed on that ground and overruled. (Rec. 882-884.) The Assistant District Attorney then proceeded to an extended examination on these foreclosed matters, which was prejudicial to the defendants. (Rec. 882-884.)

4. The Assistant District Attorney conducted an unfair and insidious cross-examination of Judge Michael Igoe, a witness for the defense, seeking by innuendo to prove that the Judge was acquainted with the criminals who were involved as violators of the liquor laws of the United States, and who were concerned in the alleged conspiracy, as follows (Rec. 907-908):

"Q. Now, Judge, do you know a man named Clem Swanson, I mean Elmer Swanson?

- A. Not by name.
 Q. Do you know a man named Clem Dowiat?
 A. Not by name.
 Q. Do you know a man named Kamarek?
 A. No.
 Q. Do you know a man named H. L. Welch?
 A. Those are evidently the names of those defendants, from this report; I don't know any of them, if that is what you are trying to find out.
 Q. Why do you say that?
 A. Because the names are here. Here is Charles Swanson, Clem Dowiat. How did you think I might know them?
 Q. Is H. L. Welch one of those?
 A. I don't think—
 Q. I know you read that report.
 A. What makes you think I might know them?
 Q. I only asked you—
 A. Well, you did ask me, I ask you what makes you think I might know them?
 Q. You say you don't know them.
 A. I am telling you I don't know him.
 Q. That is the point. You say you don't know them, but Mr. Glasser does know them?
 A. I don't know anything about them.
 Q. But you don't know?
 A. You know I don't know them. You don't have to insinuate I do, either."

5. The Assistant District Attorney refused to permit the defendant Glasser to examine the file and reports in his possession for the purpose of refreshing his recollection on cross-examination, notwithstanding the order of the court to that effect. (Rec. 979, 982, 983.)

6. The Assistant District Attorney placed Thomas Bailey, a rebuttal witness for the Government, on the stand for alleged rebuttal and interrogated him in regard to his connection with the Treasury Department, which was received under objection. He was asked regarding his services with the Treasury Department after 1926.

He testified that he had been stationed at Philadelphia, Wilmington, Delaware, Baltimore, and in the Western District of Virginia. That a John Paul was District Judge and Joseph Chitwood District Attorney of that District. That he had two assistants, Frank Tavner and Art Gilmer. The name of the District Clerk was Clarence Gentry. That he had investigated cases which resulted in trials before Judge Paul. That he had been awarded during the World War the American Distinguished Service Cross, the French Croix du Guerre, with a gilt star, and the purple heart of an oakleaf cluster. That he had been a lieutenant and battalion commander in the World War. That these decorations were received for valor, and that the purple heart was received because of the witness receiving two wounds in action. That he had never been run out of the south or ordered out of a courtroom by a judge. All this was received subject to objection and exception. (Rec. 1039-1040.)

7. While Government witness Del Rocco was testifying in regard to alleged transactions between offenders against the law and defendants Horton and Kretske, the Assistant District Attorney said to the witness:

“Was there anything said there about their not being brought to trial?” (Rec. 244.)

8. These words were put in the mouth of the witness by the Assistant District Attorney in the examination of William Wroblewski (Rec. 636):

“Q. Well, now, would it refresh your recollection if I was to call your attention to a statement that you made to Mr. Devereux and Mr. Bailey on August 3, 1939, in which you said, ‘On one occasion while I was in Roth’s office, he, Kretske, said to me if I had any cases fixed, don’t talk about them or you will get into some trouble.’ Do you remember that?

A. I don’t believe it was Mr. Kretske.

Q. Who told you that?

A. Well, the way that come out. I went down to see Mr. Al Roth, and I told him that I was having trouble with the law. I said that the law is looking for some information from me, and Mr. Al Roth told me if I gave information to anybody I would be implicated in the case.

Q. Was it he used the word 'implicated'?

A. That is right.

Q. So that was an occasion when you were in Roth's office that Mr. Roth said that to you?

A. Yes, sir.

Q. Now, are you sure he didn't say: 'If I had any cases fixed, don't talk about them or you will get into more trouble'? That he didn't use that language?

A. Well, I might have expressed myself that way at the time, but I recall now that the right word is implicated.

Q. Implicated?

A. Yes, sir."

9. These leading questions were put to the Government witness Brantman by the Assistant District Attorney (Rec. 660-661):

"Q. Didn't Mr. Kretske tell you to get the five thousand dollars?

A. I don't know, he might have said the work was worth that.

Q. Do you recall a long conversation in the District Attorney's office?

A. I might recall some of it. They asked many questions.

Q. Do you recall Mr. Devereux asking: 'Q. Didn't Mr. Kretske tell you to get five thousand dollars from Nick? A. Yes, sir.' Do you recall that?

Mr. Stewart: May I object? He has no right to bring before this jury what was said in the District Attorney's office.

The Court: Objection overruled.

Q. Do you remember that question?

A. I don't remember that question. I am trying to recall the conversation."

10. Government's witness Edwin Walker, who had testified as to his method of procedure in the cases brought before him, was asked by the Assistant District Attorney (Rec. 289):

"It does not mean that there may not be probable cause, but that it was not shown to you."

11. On direct examination of Government witness Workman the Assistant District Attorney put the testimony in the witness' mouth in the following way (Rec. 206):

"Mr. Ward: Q. Now, did you discuss with any person, your case? I don't want you to say what was said, but did you discuss with any person anything about your case before you went to Ed Hess' office?

A. No, I don't recollect that I did.

Q. Did Mr. Ramsey talk to you about it?

Mr. Stewart: I object. He said he did not recollect that he did. The prosecutor has no right to cross-examine his own witness.

Mr. Ward: Q. Would it refresh your recollection if I were to say to you that you had a conversation with me in my office in which you told me that Ramsey was Schiabone and that you talked to Ramsey before you went to Ed Hess' office? Would that refresh your recollection?

Mr. Stewart: May I have a ruling, your Honor? That is proper.

The Court: Overruled.

Mr. Stewart: Exception."

12. The Assistant District Attorney on re-direct examination permitted by the Court went into subject matter of the direct examination which had not been opened up by cross-examination and had the Government Witness, Victor Raubunas, testify that he was inside of the delicatessen store on the first occasion and saw Louis Kaplan coming. That Kretske came to the corner of the

store in a green car, and opposite him sat the defendant Glasser. (Rec. 520-523.)

H.

The Court erred in admitting and permitting to be read to the jury Exhibits Nos. 81A and 113 as evidence against the defendant Kaplan, and holding that it was for the jury to determine if they were evidence against anyone else. (Rec. 533, 534.)

Exhibit 81A is a report of the Internal Revenue Service, Alcohol Tax Unit, dated July 14, 1937, case 4570-M, pertaining to Victor Raubunas, Louis Kaplan, Adam Widzes, *et al.*, concerning premises at 2524-34 South Western Avenue, Chicago, Illinois, with seizure list, together with statements of witnesses. It contains the rankest hearsay, setting forth that a man giving the name of L. Davis, later identified as Louis Kaplan, ordered four tons of coal delivered to a building with a high smoke stack at 2524 South Western Avenue. That he continued to place orders periodically up to and including May 15, 1936, at which time orders totaling 450 tons had been placed. That a still had been set up in this building. It further states that Frank Hill, to be used as a Government witness knew Kaplan for three years previous to this date. That he did not see him until the still began to operate at 2524-36 South Western Avenue, November, 1935, to June, 1936. During the period the still was operating Kaplan came to Hill's office several times. That James Brown while working at 2534 South Western Avenue, saw Kaplan come from the still room, also saw Government witness Raubunas. Clem Haydock and Edward Jawor, employees of the Pulaski Coal Company, identified Kaplan as L. Davis who had ordered coal delivered to the building with the

high smoke stack at 2534 South Western Avenue. Murray Ellis saw Kaplan around the premises. Lawrence Craven saw Kaplan meet with other defendants in his gas station at 3915 Ogden Avenue.

Exhibit 81A further contains the recommendation that Frank Hill, Murray Ellis and James Brown be allowed to testify on behalf of the Government. While they are more or less reluctant witnesses, it is the belief of the investigators that if they are requested to appear at the office of the United States Attorney before the trial they will testify favorably. That Lawrence Craven is also a reluctant witness and it recommended that the same procedure be followed with him. Exhibit 81A continues as follows:

"Louis Kaplan, 3125 W. 19th St., Chicago, Ill., male, white, Jewish descent, age 55, height 5 feet 8 inches, weight 215 pounds, stocky build, married, citizenship not known, owns and operates the Kaplan Motor Sales Company, 3152 Ogden Ave., Chicago, Ill. (Automobile sales agency for the Nash car.) Reported to be worth approximately \$200,000.00, criminal record not known with exception of his reputation as a bootlegger in Chicago, Illinois. (A Louis Kaplan was arrested at 616 West Madison St., Chicago, Ill., for violation of the National Prohibition Act on May 10, 1923, and sentenced to pay a fine of \$300.00; a man by the same name was also arrested by Chicago police officers February 7, 1935, together with one Edward Dewes, in connection with the killing of Tony Pinna and seriously wounding Vito Messino at Louis Kaplan's garage, 3152 Ogden Ave., Chicago, Ill., in which Louis Kaplan stated that he was a victim of an attempted kidnapping and was released.)"

Exhibit 113 is a report of the Internal Revenue Service, Alcohol Tax Unit, Chicago, Illinois, dated July 2, 1937, their own case No. 4957-M, concerning violation of internal revenue laws by carrying on business of a distiller, by

possession and control of a still, etc., at Spring Grove, Illinois, by Louis Kaplan, Victor Raubunas, Edward R. Dewes, Stanley Slesuraitis, Joseph F. Cole, Louis Pregenzer, Lincoln Rankin, Ralph Bogush, Joe Fernandez, and Ceil Simms, containing narrative history of evidence, seizure, statements of witnesses, chemist's report, with finger print reports of Louis Kaplan, Lincoln Rankin and Louis Pregenzer. In substance, it sets forth that Louis Kaplan is implicated by Peter Frett; that Kaplan took part in the negotiations for a lease in the old Borden Milk Plant. That he was present at the first conversation. That he went to the office with Dewes and returned to the tavern. That the person identified from pictures as Kaplan gave Dewes alias Schwahn, the money to pay for the rental of the plant. That Kaplan came to one Schnitzler's office at a lumber company in November and December of 1936, accompanied by Dewes, Slesur and Cole. That orders for coke were placed and Kaplan guaranteed payment for orders placed by any of the parties. That Sylvester Urbanski identified Louis Kaplan as visiting the premises of the Highway Tavern in Fox Lake, Illinois. That Joseph Cole says Kaplan inspected the premises in October, 1936, for erection of an illicit distillery. That he was present when Louis Kaplan gave some money to Edward Dewes who in turn gave it to Peter Frett, at which time Kaplan stated he had obtained a lease for the milk plant in Spring Grove. That Kaplan gave him instructions to purchase coke and deliver to the milk plant. Kaplan instructed him to arrange for board and room for the men who would be employed at the still and will pay him forty or fifty dollars a week for his assistance in obtaining the lease, ordering coal and boarding employees. That he heard Louis Kaplan instruct Stanley Slesur to change one of the valves and one of the steam pumps after the still was in operation.

That Kaplan agreed to deliver to him 1250 gallons of alcohol as a reward for his services. That the records of the Illinois Bell Telephone Company show many calls from Fox Lake 97 to Crawford 6663, which is listed in the name of Mrs. Jenny Kaplan, 3125 W. 19th Street. That Peter Frett says he was paid \$2,500.00 by Louis Kaplan; that Joe Cole says Frett got \$500.00 for his business and \$25.00 or \$30.00.

Said Exhibit 113 contains the following recommendation by agents:

"It is recommended that Deferlant Cole, Fernandez and Simms be used as a witness for the government in order to strengthen the evidence against the principals Kaplan, Raubunas, Dewes and Slesur. The last four named defendants have long been identified with illicit alcohol activities in the Chicago area, and owing to their methods of operation it has been very difficult to obtain evidence for an arrest and conviction."

This Exhibit contains the same description of defendant Louis Kaplan as was appended to Exhibit 81A.

When it is recollected that Kaplan was a co-defendant in this case, and any legal evidence introduced against him would be identically the same as the legal evidence introduced against any other defendants, there remains no ground of contention that the introduction of these two exhibits was not prejudicial and reversible error as to each appellant in this cause.

In *Cook v. U. S.*, 138 U. S. 157, 184, 34 L. Ed. 908, 913, *supra*, the Court said:

"At the trial below, one of the defendants' counsel, who had been attorney-general of Kansas, and who, in that capacity made to the governor of that State a report touching the death of Cross immediately after it occurred, was called in rebuttal for the prosecution. That report contained various statements purporting

to have been made by the defendants, and which connected them with the killing of Cross. Although the witness stated that the report was based upon hearsay evidence merely, was thrown hastily together by a stenographer, and was incorrect, and that the defendants had not made the statements attributed to them, certain parts of it were admitted in evidence to the jury, against the objection of the defendants. The record shows that this report was read in evidence to show that the witness had made different ~~statements at another time and place.~~ And the Court, in its charge, said to the jury: 'The instructions given above are limited, so far as the evidence is concerned, by the following instructions: The portions of Attorney-General Bradford's report was admitted to be considered by you as to whether or not the statements contained were made by the parties to said Bradford, said Bradford now being attorney for the defendants and denying the truth of the statements therein contained; and as to whether or not these statements were ever made to said Bradford is a question of fact to be considered by you from all the evidence on that subject; and if you believe that the statements were not so made to said Bradford, you are to disregard the same. But if you believe from the evidence that they were so made to said Bradford, then you are instructed to consider them as evidence, but only as to such parties by whom they were made.' The jury were thus informed that this report, although merely hearsay, was substantive evidence upon the issue as to whether the defendants were present at, and participated in the killing. The representatives of the government in this court frankly conceded, as it was their duty to do, that this action of the court below was so erroneous as to entitle the defendants to a reversal.

"For the error above mentioned the judgment is reversed and the cause remanded with directions to grant a new trial."

In *Logan v. U. S.*, 144 U. S. 263, 36 L. Ed. 429, *supra*. the Court said:

"There being other evidence tending to prove the

conspiracy, and any acts of Logan in furtherance of the conspiracy being therefore admissible against all conspirators, as their acts, the admission of incompetent evidence of such acts of Logan prejudices all the defendants and entitled them to a new trial."

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

EDWARD M. KEATING,
Counsel for Petitioner.

JOSEPH R. ROACH,
Of Counsel.

APPENDIX.

STATUTES INVOLVED.

Section 88, Title 18, U. S. C. A., is as follows:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both."

Section 91, Title 18, U. S. C. A., is as follows:

"Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of any thing of value, to any officer of the United States, or to any person acting for or on behalf of the United States, in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding, which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years."

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CHARLES ELMORE GROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 31

NORTON I. KRETSKE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF PETITIONER, NORTON I. KRETSKE

✓ EDWARD M. KEATING,

Attorney for Petitioner.

JOSEPH R. ROACH,
Of Counsel.

INDEX.

	PAGE
Opinion of court below.....	1
Jurisdiction	2
Statement of the case.....	2
Statement of fact.....	3
Specification of errors.....	8
Argument	12
Summary of Argument.....	12

Point I.

The petitioner was denied due process of law because the grand jury which returned the indictment was illegally constituted and void, because of the intentional, total exclusion of the female sex from the jury box from which the grand jury were drawn, the state law making it mandatory that women be placed on the jury list..... 19

Point II.

The petitioner was illegally put upon trial upon a record which absolutely fails to show that the indictment, which was the basis of the charge against him, was returned by the grand jury into court.... 20

Point III.

A—The count of the indictment upon which conviction was had in this case is vague, indefinite and uncertain, and did not advise petitioner of the charge which he had to meet with reasonable particularity as to persons, time, places and circumstances, and is therefore fatally defective 24

- B—Owing to this vagueness, etc., petitioner was deprived of a fundamental right under Article V of the Amendments to the Constitution of the United States, which so far as applicable, provides that “no person for the same offense shall be twice put in jeopardy of life and limb”, the indictment being so vague, etc., that the same could not be pleaded in a second prosecution of petitioner for the same offense..... 24
- C—It offends against the Sixth Amendment to the Constitution, which provides that “in all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation” 24
- D—The indictment, if the inducement and means alleged are urged as the charging part of it, is fatally duplicitous, in addition to being subject to the same infirmities alleged under A, B and C hereof 25
- E—The indictment also leaves a doubt in the mind of the Court concerning the offense intended to be charged, and therefore is fatally defective for uncertainty 26
- F—The indictment, construed with the inducement and the means alleged, also alleges a case where concerted action is necessary to constitute a substantive offense, and hence a conspiracy in regard thereto cannot legally exist; and, is, therefore, fatally defective..... 26

Point IV.

PAGE

The total, systematic exclusion from the trial jury box of females who were not members of a private League of Women Voters, and who had not, as members of this League, attended certain jury classes maintained for the purpose of giving instructions to potential jurors, in which lectures the views of the prosecution were presented, and the exclusion of females who otherwise possessed all of the requisite qualifications for jury service, constituted a denial of the constitutional right of trial by an impartial jury..... 43

Point V.

The admission of Government's Exhibits 81A and 113, severally, containing, as each did, rankest hearsay and highly inflammatory statements, is a denial of the right of confrontation with the witnesses whose statements appeared in said Exhibits..... 44

A—The reception in evidence of irrelevant, prejudicial hearsay documents is reversible error.. 44

B—Where a prejudicial ruling is made against, or prejudicial inadmissible evidence is introduced against one alleged co-conspirator, and such is prejudicial as to him, it is likewise prejudicial as to all other alleged co-conspirators charged with that offense in the same indictment 45

C—This error could not be cured by any subsequent instructions to the jury..... 45

Point VI.

PAGE

The trial judge, in questioning witnesses for the defense, was not calmly judicial, dispassionate and impartial. He participated in the trial with illegal and prejudicial activity, and not only failed sedulously to avoid all appearance of advocacy, but became an active advocate for the Government. By such attitude he clearly and definitely conveyed to the jury that he believed that the defendants were guilty as charged. Further, by his repeated cross-examination of defense witnesses, and in such casting aside and violating the rules on that subject, as applied to the Assistant District Attorney, he deprived petitioner of a fair and impartial trial.. 51

Point VII.

The judge imposed such limitations on the right of petitioner and petitioners as (a) to fatally prejudice them in their defense, and (b) to constitute a denial of due process of law..... 70

Point VIII

It was reversible error to cross-examine the witnesses for petitioners far beyond the subject matter and time embraced by their direct examination, the effect and purpose of such cross-examination being the showing of matters against the petitioners, which, if provable at all, should have been proved by the Government as part of its case in chief. This cross-examination had also for its purpose and effect the impeachment of these witnesses by showing them guilty of offenses not involving moral turpitude, which could not be shown directly as

impeaching circumstances. Also, its purpose and effect was to make these witnesses, beyond the scope of cross-examination, testify to facts in favor of the Government, without making them direct witnesses for it..... 72

Point IX.

The prosecutor committed reversible error through the following conduct: (a) by leading questions persistently put in the mouths of accomplice witnesses, that were vital to the prosecution and fatal to the defense, and in that manner substituted the testimony of the prosecutor for that of an accomplice witness; (b) upon cross-examination by repeatedly putting to a petitioner, while on the witness stand, absolutely unnecessarily, the same question for the purpose of emphasis, in regard to most material matter. After the prosecutor went into a matter upon examination in chief, the judge refused, upon objections of the prosecutor, to permit petitioners to inquire into the matter. After Government witnesses had been turned over to defendants for cross-examination and were cross-examined, the prosecutor on pretended re-examination, went far beyond matters developed in cross-examination. He was permitted to introduce evidence out of the usual order continuously without showing good and exceptional cause for doing so. Upon request to do so on the part of petitioner Glasser, the prosecutor refused him the right to examine a document relied upon by the Government, in the sole possession of the prosecutor.... 73

- A—It is as much the duty of a prosecuting attorney to refrain from improper methods to bring about a wrongful conviction as it is to use every legitimate means to bring about a just one 74
- B—It was reversible error for the prosecutor, upon cross-examination, to repeatedly put to petitioners while on the stand the same question in regard to material matter..... 74
- C—Where the prosecutor goes partially into a material matter on examination in chief, it is reversible error to refuse the right to go into this same matter on cross-examination..... 74
- D—In criminal prosecutions, where a witness for the prosecution has been turned over to the defendant for cross-examination, the re-examination of the prosecutor must be confined exclusively to the cross-examination; and to materially disregard this rule is reversible error...74
- E—While a trial court has a reasonable discretion in the matter of allowing either party to introduce additional testimony in chief after the close of the case, the court should not allow the introduction of testimony out of the usual order, except for good and exceptional cause, and to do so is reversible error..... 74
- F—To refuse a defendant the right to examine a material Government document which is relied upon as evidence against him is reversible error 75

Point X

PAGE

It was reversible error for the court (a) to admit a prejudicial act disconnected with the conspiracy charged; (b) to admit in evidence against petitioners a highly prejudicial statement, act or declaration made by another alleged conspirator; and (c) to exclude important evidence operating in behalf of petitioners.....	82
A—Where evidence of acts disconnected with a conspiracy is admitted, the same is reversible error available to any defendant prejudiced thereby	82
B—It is reversible error to admit in evidence against alleged co-conspirators a statement, act or declaration after the termination of the alleged conspiracy	82
C—Where in a conspiracy charge important evidence operating in behalf of defendants is excluded from the jury, such constitutes reversible error	83
Conclusion	85

TABLE OF CASES CITED.

Adler v. U. S., 182 Fed. 464, 472 (C. C. A. 5).....	51
Alford v. U. S., 282 U. S. 687, 75 L. Ed. 624.....	70, 71
Ammerman v. U. S., 216 Fed. 326 (C. C. A. 8).....	26
Anderson v. U. S., 260 Fed. 557 (C. C. A. 8).....	25, 29
Asgill v. U. S., 60 Fed. (2d) 78 (C. C. A. 4).....	25, 31, 70
Averitt v. State. 84 S. W. 482.....	45, 49
Aylesworth v. U. S., 65 Ill. 373.....	20
Baker v. State, 120 Wis. 135, 148, 149.....	45, 49
Bartkus v. U. S., 21 Fed. (2d) 425 (C. C. A. 7).....	25
Berger v. U. S., 295 U. S. 78, 79 L. Ed. 1314.....	74
Brady v. U. S., 39 Fed. 312, 314 (C. C. A. 8).....	44
Bratton v. U. S., 73 Fed. (2d) 795 (C. C. A. 10)....	26, 43
Brown v. U. S., 299 Fed. 10 (C. C. A. 3).....	25
Brown v. U. S., 150 U. S. 93, 37 L. Ed. 1010.....	82
Brown v. U. S., 21 Fed. (2d) 827 (C. C. A. 5).....	25
C. M. Spring Drug Co. v. U. S., 12 Fed. (2d) 852....	45
Chappel v. State, 16 Tenn. (8 Yerger) 166.....	20
Cheney v. State, 7 Ohio 222.....	45, 49
Collenger v. U. S., 50 Fed. (2d) 345, 350, 351....	70, 71, 82
Collins v. Commonwealth, 15 Ky. Law Rep. 691, 693..	75
Commonwealth v. Lucreiti, 295 Pa. 191, 144 Atl. 85	45, 49
Commonwealth v. Hunt, 4 Metcalf (Mass.) 111, 36 Am. Dec. 346	25
Conley v. U. S., 46 Fed. (2d) 53, 54, 46 (C. C. A. 9)..	52
Conrad v. U. S., 127 Fed. 798 (C. C. A. 5).....	25
Cook v. U. S., 138 U. S. 157, 184, 34 L. Ed. 908, 913..	44
Cooper v. U. S., 9 Fed. (2d) 216 (C. C. A. 8).....	82, 83
Creall v. U. S., 21 Fed. 690 (C. C. A. 8).....	26
Crowley v. U. S., 194 U. S. 461, 48 L. Ed. 1075.....	19
Dahly v. U. S., 50 Fed. 37	3
Dalton v. Commonwealth, 226 Ky. Rep. 127, 130, 131..	74

District of Columbia v. Clawans, 300 U. S. 617, 81 L. Ed. 843	70
Felker v. State, 54 Ark. 489.....	20, 22
Fleisher v. U. S., 302 U. S. 218, 82 L. Ed. 208.....	25
Fletcher v. Commonwealth, 15 Ky. Law Rep. 691, 693	75
Franz v. U. S., 62 Fed. (2d) 737, 739 (C. C. A. 6)....	51
Gideon v. U. S., 52 Fed. (2d) 427 (C. C. A. 8).....	72
Gilmer v. Higley, 110 U. S. 47, 28 L. Ed. 62.....	70, 71
Glover v. U. S., 147 Fed. 426 (C. C. A. 8).....	52
Goodson v. State, 29 Fla. 511, 524-26, 10 S. Rep. 738, 36 A. S. R. 135.....	20
Green v. State, 19 Ark. 178.....	20, 23
Greenbaum v. U. S., 80 Fed. (2d) 113, 125, 126, 127 (C. C. A. 9)	44
Hardy v. State, 1 Tex. Ct. App. 556.....	20
Harrold v. Oklahoma, 169 Fed. 47 (C. C. A. 8)..	70, 72, 74
Hass v. U. S., 93 Fed. (2d) 427, 436 (C. C. A. 8)....	44
Haussener v. U. S., 4 Fed. (2d) 884, 887 (C. C. A. 8)	72
Havener v. U. S., 15 Fed. (2d) 503 (C. C. A. 8).....	72
Heacock v. State, 42 Ind. 393.....	20
Heard v. U. S., 255 Fed. 829 (C. C. A. 8).....	70
Hernsley v. Commonwealth (Ky. Ct. of App.), 31 Ky. Law Rep. 386	73
Hilt v. U. S., 279 Fed. 421 (C. C. A. 5).....	25
Hills v. U. S., 97 Fed. (2d) 710, 719 (C. C. A. 9)....	83
Holcomb v. State, 31 Ark. 427.....	20, 22
Holt v. U. S., 94 Fed. (2d) 90, 94 (C. C. A. 10).....	45
Hunter v. U. S., 62 Fed. (2d) 217, 220 (C. C. A. 5)..	51
In re Benson, 58 Fed. 962 (C. C. A. Calif.).....	25
Jackson v. State, 21 Ind. 79.....	20
Kelly v. People, 39 Ill. 157	20, 24
Larkin v. U. S., 107 Fed. 697.....	33
Laura v. State, 26 Miss. 175.....	20, 23
Laurence v. U. S., 18 Fed. (2d) 407 (C. C. A. 8)....	72
Logan v. U. S., 144 U. S. 263, 36 L. Ed. 429.....	45, 82
Marsh v. People, 226 Ill. 464.....	19

	PAGE
McKenna v. U. S., 127 Fed. 88 (C. C. A. ...)	25, 27
McNutt v. U. S., 267 Fed. 671 (C. C. A. 8).....	52
Middleten v. U. S., 49 Fed. (2d) 538 (C. C. A. 8)....	25, 72
Minner v. U. S., 57 Fed. (2d) 506, 511, 512 (C. C. A. 10)	70, 32
Moyer v. U. S., 78 (2d) 624 (C. C. A. 9).....	70
Naftger v. U. S., 200 Fed. 494, 499, 500 (C. C. A. 8)..	44
Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1075....	19, 43
Olson v. U. S., 133 Fed. 849 (C. C. A. 8).....	83
Outlaw v. U. S., 81 Fed. (2d) 805 (C. C. A. 5).....	42
Paddock v. U. S., 79 Fed. (2d) 873, 874 (C. C. A. 9)..	44
People v. Adams, 76 Cal. App. 178, 244 Pac. 106..	72
People v. Barberi, 149 N. Y. 256, 275, 276.....	74
People v. Cochran, 313 Ill. 508.....	19
People v. Cunningham, 195 Ill. 550, 63 N. E. 517....	52
People v. Egan, 331 Ill. 489, 163 N. E. 357.....	52
People v. Fleming, 166 Cal. 359, 381, 136, Pac. 291, 302	72
People v. Geidras, 338 Ill. 340.....	72
People v. Goltra, 2 Pac. (2d) 35 (Cal. App.)....	45, 49
People v. Gray, 261 Ill. 140.....	20
People v. Green, 329 Ill. 576.....	19
People v. Harper, 145 Mich. 402, 108 N. E. 689....	75
People v. Lembke, 320 Ill. 553.....	19
People v. Mack, 267 Ill. 481.....	19
People v. Mankus, 292 Ill. 435, 438.....	19
People v. McGraw, 66 App. Div. 372.....	45, 49
People v. Newman, 261 Ill. 11, 103 N. E. 489.....	72
People v. Pellanzo, 207 N. Y. 560.....	45, 49
People v. Quinn, 295 Pac. 1043.....	73
People v. Rongetti, 331 Ill. 489, 163 N. E. 357.....	52
People v. Schraeberg, 347 Ill. 392.....	19
People v. Wolfe, 352 Ill. 109.....	19
Pettibone v. U. S., 148 U. S. 197, 37 L. Ed. 419....	25
Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6)..	45, 74, 75

Pierre v. Louisiana, 306 U. S. 354, 83 L. Ed. 757.....	19, 43
Prettyman v. U. S., 180 Fed. 30 (C. C. A. 8).....	82
Renigar v. U. S., 172 Fed. 646 (C. C. A. 4).....	20, 21
Rutherford v. U. S., 258 Fed. 855 (C. C. A. 2).....	52
Sala v. U. S., 104 Fed. 544 (C. C. A. 9).....	25
Samson v. State, 124 Ga. 776.....	20
Simons v. Commonwealth, 89 Va. 156.....	20
Smith v. Texas, 311 U. S. 128, 85 L. Ed. 106, 108..	19, 43
State v. Borri, 199 S. W. 136, 138 (Mo.).....	73
State v. Cannon, 66 Mo. 116.....	72
State v. Denis, 19 La. Ann. 119.....	74
State v. Leopold, 110 Conn. 55, 65, 147 Atl. 118..	45, 49, 50
State v. Nugent, 116 La. Rep. 99.....	74
State v. Rombolo, 99 Atl. 434.....	45, 49, 50
State v. Wright, 4 La. Ann. 589, 590, 591.....	74
Sykes v. U. S., 204 Fed. 909.....	3
Terzo v. U. S., 9 Fed. (2d) 357 (C. C. A. 8).....	72
Throckmorton v. Holt, 180 U. S. 552, 55 L. Ed. 663..	45
Tucker v. U. S., 5 Fed. (2d) 88, 822, 823, 824 (C. C. A. 8)	72
U. S. v. Am. Naval Stores Co., 186 Fed. 592 (D. C. Ga.)	26
U. S. v. Armstrong, 265 Fed. 683, 695 (D. C. Ind.)..	26
U. S. v. Britton, 108 U. S. 205, 27 L. Ed. 698.....	25, 30
U. S. v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588....	25, 27
U. S. v. Dembowski, 252 Fed. 894.....	26
U. S. v. Dowling, 278 Fed. 630 (D. C. S. D. Fla.)..	25
U. S. v. Dietrich, 146 Fed. 664.....	26
U. S. v. Dressler, 112 Fed. (2d).....	44
U. S. v. Eisenminger, 16 Fed. (2d) 816.....	25
U. S. v. Geraci, 280 Fed. 256 (D. C. S. D. Fla.)....	25
U. S. v. Hagan, 27 Fed. Supp. 814 (D. C. Ky., June 2, 1939)	26
U. S. v. Hess, 124 U. S. 483, 31 L. Ed. 516.....	25, 33
U. S. v. Levally, 36 Fed. 687.....	20

	PAGE
U. S. v. McNamara, 91 Fed. (2d) 986 (C. C. A. 2)...	82
U. S. v. Milner, 36 Fed. 890.....	25
U. S. v. Murphy, 50 Fed. (2d) 455 (D. C. S. D. Ala.)	25, 43, 44
U. S. v. Murphy, 224 Fed. 554, 566.....	19
U. S. v. N. Y. C. & H. R. R. Co., 146 Fed. 298....	26
U. S. v. Reichelt, 32 Fed. (2d) 152 (C. C. A. Calif.)	25
U. S. v. Sager, 49 Fed. (2d) 725 (C. C. A. 2).....	26, 42
U. S. v. Sam Wing, 254 Fed. 500 (D. C. N. D. Calif.)	25
U. S. v. Sprengel, 103 Fed. (2d) 876 (C. C. A. 9)..	82
U. S. v. Standard Oil Co., 170 Fed. 988, 993-995..	19, 43
Waldron v. Waldron, 156 U. S. 361, 39 L. Ed. 453..	45
Williams v. Commonwealth, 90 Ky. Rep. 596.....	74
Williams v. U. S., 168 U. S. 382, 42 L. Ed. 509....	42
Williams v. U. S., 93 Fed. (2d) 686 (C. C. A. 9)..	51
Wilson v. U. S., 4 Fed. (2d) 888 (C. C. A. 8).....	72
Yundt v. People, 65 Ill. 373.....	20

TABLE OF STATUTES CITED.

Sec. 88, 18 U. S. C. A.....	31, 88
Sec. 91, 18 U. S. C. A.....	41, 88
Sec. 25, Chap. 78, Ill. Anno. Stat.	87
Sec. 1, 1939 Ill. Rev. Stat., p. 1929.....	87
Sec. 2, 1939 Ill. Rev. Stat., p. 1933.....	87

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 31

NORTON I. KRETSKE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF PETITIONER, NORTON I. KRETSKE

*To the Honorable Harlan F. Stone, Chief Justice, and
the Associate Justices of the Supreme Court of the
United States:*

I

Opinion of the court below.

Opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 116 Fed. (2d) 690. The opinion is in the Record at page 1117 thereof.

II

Jurisdiction.

The jurisdiction of this Court is founded upon Section 347 (a), Title 28, Judicial Code, Section 240(a), as amended by Act of February 13, 1925; and Rule 11 of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

The dates of judgment and denial of petition for rehearing: The date of the judgment to be reviewed is December 13, 1940. (Rec. 1140.) The petition for rehearing was denied January 23, 1941. (Rec. 1239.) Certiorari was granted by this Court on April 7, 1941.

III

Statement of the case.

The Record shows that on "the 29th day of September, A. D. 1934, was 'filed in the Clerk's Office of said Court a certain indictment, in words and figures, to-wit.'" This indictment contained two counts. (Rec. 2-37.) Count 1 was withdrawn by the Government on an election to stand on Count 2. (Rec. 100.) Count 2 attempted to charge a conspiracy to defraud the United States, in violation of Title 18, Section 88 of the United States Code (R. S. 5440; May 17, 1879, C. 8, 21 Stat. 4; Mar. 4, 1909, C. 321, Sec. 37, Stat. 1096).

The defendants in this indictment, including petitioner, filed a motion to quash the indictment, which was overruled. (Rec. 42.) They then filed demurrers thereto (Rec. 42-50), which were on the 16th day of November, 1939, overruled. The petitioner entered a plea of not guilty to this indictment. (Rec. 95.) The defendant

Kretske moved for a directed verdict in his favor at the close of the Government's case, and at the close of all the evidence, which motion was denied, and exception taken to each ruling. (Rec. 99, 100.) The jury found the petitioner guilty. (Rec. 101.) He moved for a new trial, which was overruled. (Rec. 104.) He was sentenced to imprisonment for 14 months. (Rec. 104.) He appealed to the Circuit Court of Appeals for the Seventh Circuit, which Court on December 13, 1940, sustained the said judgment of the District Court for the Northern District of Illinois, Eastern Division. Petition for re-hearing was denied on January 23, 1941. (Rec. 1239.) Petitioner's petition for writ of certiorari was granted by this Court on April 7, 1941.

IV.

Statement of fact.

No effort will be made here to make a statement completely summarizing the evidence introduced for and against the petitioner. Suffice it to say, that the testimony of the Government was mainly that of accomplices, whether indicted, or unindicted, and it was characterized by inconsistency, contradictoriness, and such lack of convincingness, as would ordinarily render it impotent to convince a jury. It was further uncorroborated by any but accomplice witnesses, who in their attempted corroboration, generally contradicted each other. This type of testimony would be insufficient to support a verdict in the Eighth Circuit, as shown by the cases of *Sykes v. U. S.*, 204 Fed. 909, and *Dahly v. U. S.*, 50 Fed. 37. As these cases have been rejected in both the Second and in this, the Seventh, Circuit, it could be argued that there is presented such conflict of authority in regard to such evidence as to bring the case within the orbit

of the certiorari jurisdiction of this Court. This view, however, is not here pressed. It is put forward merely to emphasize the inescapable conclusion that the evidence against petitioner was of a borderline character, and any substantial error made by the Court or prosecutor in the course of proceedings would inevitably be reversible error.

We, however, submit the following view of petitioner's position, which though sketchy and not complete, will serve, we believe, to shed light upon the legal points later argued in his behalf in this brief.

Petitioner, Norton I. Kretske, was an attorney in private practice at the time of the return of the indictment in this cause. (Rec. 798.) He referred certain cases involving violations of the Internal Revenue Law to petitioner Alfred E. Roth. (Rec. 799-815.) Roth was an attorney who specialized in that field. (Rec. 833.) Kretske had never tried a criminal case. (Rec. 816.) The Government sought to prove the conspiracy charged in the alleged indictment by mere unsupported statements of certain convicted and self-confessed habitual law violators that they had given money to Kretske for the alleged purpose of corrupting petitioner Glasser. All of the above was denied by Kretske (Rec. 799), as well as by Glasser. (Rec. 912.)

The Government's case in the main rests upon the violators' interpretation of the phrase "take care of the case." It will be noted that the phrase "take care of the case" is used by the violators interchangeably with the phrase "fix it". (Rec. 297, 300.)

The Government's testimony, as above observed, was contradicted by its own witnesses in all material instances. As the other petitioners are expected to set out in detail these contradictions, it will suffice for the

purpose of illustrating the above, to set out but one of such instances. The Government sought to involve Kretske in the receipt of certain monies which had been paid by one Abesketes to one Brantman. Brantman had taken \$3,000.00 from Abesketes, for which he had given Abesketes a receipt. (Exhibit 134, Rec. 651.) The receipt was in words and figures as follows: "Received of Nick Abesketes on account of services the sum of \$3,000.00. Signed, William Brantman, 10 North La Salle Street." Brantman testified that he rendered no services for Abesketes (Rec. 651); that he received the money from Abesketes to give to Kretske, who, he understood, was to be the legal representative of Abesketes. (Rec. 652.) Brantman testified that Abesketes made the appointment himself for the meeting. (Rec. 651.) Abesketes on the other hand, testified that Brantman, a total stranger to him, called and suggested that he come to Chicago. (Rec. 664.) Abesketes testified that he gave Brantman the money to prevent an indictment. (Rec. 667.) Abesketes further testified that he did not know Kretske; that he never had any connection with him, either legal or illegal. (Rec. 671.)

Petitioner Kretske testified in his own defense. (Rec. 790-822.) In his testimony he denied categorically the alleged statements attributed to him by certain of the Government's witnesses. As above observed, whenever the Government made an attempt to prove statements by Kretske by the self-confessed criminals, there was present irreconcilable contradiction on the part of these criminals.

The attitude of the trial judge, which is made the basis of many assignments of error, which will be discussed at length later in this brief, is demonstrated quite strikingly by his questions and statements during the

cross-examination of certain Government witnesses and during the cross-examination of petitioner. Illustrative of this action would be the conduct of the trial Judge during the testimony of a witness for the prosecution, one Stanley Slesur, an inmate of a United States Penitentiary. This witness (Rec. 623) was questioned by the prosecutor as to whether or not he had gone to the Tribune Building for the purpose of seeing petitioner or for the purpose of inserting an ad in the Chicago Tribune. The witness stated that he had come to the Tribune Building for the purpose of inserting an ad. This was contradictory of the answer of Stanley Wasielewski (Rec. 631), another Government witness, who had not yet testified, but who the Government knew was going to testify that Slesur went to the Tribune Building for the purpose of seeing Kretske. Up to this point in the trial there was no showing that Slesur had visited Kretske's office. The Court, however, took up the cross-examination of this witness, and in a hostile manner warned the witness in effect that it would be better for him if he would testify that he did not go to the Tribune Building for the purpose of inserting an ad, but for the purpose of calling on Kretske. Illustrative of this point, we set forth the examination of this Government witness by the trial Judge (Rec. 625):

"The Court: Listen, what we want here is the truth, and nothing but the truth. Do you understand that?"

A. Yes, sir.

Q. If you testify falsely on this stand, it may be a much more serious offense than the one you are here on now. I want you to tell the truth, and nothing but the truth. If you went to the Tribune Building for some other purpose, say so.

The Court: I want to ask him a question. Did you go to the Tribune Building that day for the purpose of inserting an ad?

A. Yes, sir.

Q. You did?

A. Yes, sir.

The Witness: From the Tribune I decided I wouldn't put the ad in, and went home. At that time there were two indictments pending against me, Spring Grove and Wilmington. I can't remember now what Stanley Wasielewski did when I got to the Tribune Building. I parked my car in a parking lot on Dearborn Street. We put the car over there together.

The Court: We will take a recess at this time. (Whereupon a recess was had.)"

After the recess this witness resumed the stand and changed his testimony. (Rec. 625.)

Another instance where the Judge made an erroneous statement derogatory and fatal to the defense was during the cross-examination of petitioner Kretske. Petitioner had testified that he had referred a number of alcohol cases to Roth for trial. (Rec. 799, 815.) The trial judge at this point in the trial interrupted the cross-examination of petitioner to state a rhetorical question:

"In the average case there is nothing difficult about the trial of any of those (alcohol) cases."

This conveyed to the jury the impression that since there was nothing difficult about the trial of alcohol cases, Kretske should have tried them himself. The jury were further led to believe that the referring of a case by one lawyer to another was an illegal act. That the trial of alcohol cases involves divergent and conflicting theories of law cannot be denied. The Solicitor General will doubtless concede that petitions for Certiorari are filed in the Supreme Court of the United States in cases involving violations of the alcohol law in greater proportion to cases arising under any other federal statute. This court has also seen fit to grant petitions for Certiorari in

numerous cases involving violations of the alcohol tax laws.

The Court had already been advised that Roth was a specialist in federal practice and as such had been engaged by many lawyers practicing in and about Chicago to represent their clients in cases involving violations of the Federal Statute. (Rec. 749, 796, 889, 890, 783.)

V.

Specification of errors.

A. The Circuit Court of Appeals for the Seventh Circuit erred in holding that petitioner was not denied due process of law because the grand jury which returned the indictment against him was illegally constituted and void, because of the intentional, total exclusion of the female sex from the jury box from which grand jurors were drawn.

B. The Circuit Court of Appeals for the Seventh Circuit erred in holding that petition was not illegally put to trial upon a record which shows that the indictment, which is the basis of the charge against him, was not returned into open court.

C. The Circuit Court of Appeals for the Seventh Circuit erred in holding that it was proper to put petitioner to trial on an indictment which failed to inform him of the nature and cause of the accusation against him, against his demurrer, asserting particularly these specifications:

(a) The count upon which he was convicted failed to charge any crime against the laws of the United States.

(b) This count was based upon the conclusions of the pleader, and failed to set forth with reasonable certainty any facts from which said conclusions could be drawn.

(c) This count was so vague, indefinite, uncertain and ambiguous that it failed to allege the ultimate and issuable facts of a conspiracy.

(d) The indictment was so vague, indefinite, uncertain and ambiguous that it would not afford petitioner protection from another charge of the very same kind against him.

D. The Circuit Court of Appeals for the Seventh Circuit erred in holding that it was not error to totally and systematically exclude from the jury box females who were not members of a private League of Women Voters, and who had not, as members of this League, attended certain jury classes maintained for the purpose of giving instructions to potential jurors, in which lectures the views of the prosecution were presented, and to exclude persons otherwise possessed of the requisite qualifications for jury service.

E. The Circuit Court of Appeals for the Seventh Circuit erred in holding that the admission in evidence of Government's Exhibits 81A and 113, severally, containing hearsay and highly inflammatory statements, was not a denial of the right of confrontation with the witnesses whose statements appeared in said Exhibits.

F. The Circuit Court of Appeals for the Seventh Circuit erred in holding that petitioner was not denied a fair and impartial trial, and denied the benefit of the presumption of innocence, by the activities of the trial judge.

G. The Circuit Court of Appeals for the Seventh Circuit erred in holding that the trial judge did not impose such a limitation of the right of cross-examination as (a) to fatally prejudice petitioner, and (b) to constitute a denial of due process of law.

H. The Circuit Court of Appeals for the Seventh Cir-

cuit erred in holding that it was not reversible error to examine the witnesses for the defendants beyond the time and subject matter embraced in the direct examination, the effect and purpose of the cross-examination being the showing of matter against the defendants, which, if proved at all, should have been proved by the Government as part of its case in chief; the impeachment of the witnesses, showing commission of crimes not felonious nor involving moral turpitude, and for the further purpose of adducing facts favorable to the Government, without the Government making the person a witness for itself, touching upon the matters upon which cross-examination was conducted.

I. The Circuit Court of Appeals for the Seventh Circuit erred in holding that it was not error to permit the prosecutor, (a) by leading questions persistently put testimony into the mouths of accomplice witnesses vital to the prosecution, and fatal to the defense, and thus substituted his testimony for that of an accomplice witness; (b) upon cross-examination to repeatedly put to a defendant while on the stand, absolutely unnecessarily, the same question in regard to a material matter; (c) after he went partially into a matter on examination in chief the judge to refuse, upon the objection of the prosecutor, to permit the defendant to inquire further into the matter; further erred (d) in holding that it was not reversible error, after the prosecutor had turned over to the defendant witnesses for cross-examination, on re-examination not to confine himself exclusively to the matter developed in cross-examination; further erred (e) in holding that it was not reversible error for the trial court to permit the prosecutor to continuously introduce evidence out of the usual order without showing good and exceptional cause for doing so; further erred (f) in

holding that it was not reversible error for the prosecutor to refuse the right of the defendant Glasser to examine a material Government document which was relied upon by the Government, and which was in the sole possession of the Government; and further erred in holding that the collective effect of each of these rulings did not work reversible error to the petitioner.

J. The Circuit Court of Appeals for the Seventh Circuit erred in holding that it was not reversible error (a) for the trial court to admit in evidence a prejudicial act disconnected with the conspiracy charged; (b) to admit in evidence against the petitioners a highly prejudicial statement, act or declaration made by another alleged conspirator after the determination of the alleged conspiracy; and (c) to exclude important evidence operating in behalf of the petitioners.

VI

ARGUMENT.

SUMMARY OF ARGUMENT.

Point I.

PAGE

Petitioner was denied due process of law because of a discriminately selected grand jury from which females, having the right to serve as grand jurors, were purposely excluded 19

Point II.

The record failed to show that the indictment herein was returned into open court, the entry "filed in open court" being for all effective legal purposes one that the indictment was not returned into open court 20

Point III.

The indictment was bad because (1) it was so vague, indefinite and uncertain that it failed to advise petitioner of the charge it contained with reasonable particularity as to persons, time, places, and circumstances; (2) owing to this vagueness, etc., it could not be successfully pleaded in a second prosecution for the same offense, in violation of the Fifth Amendment to the Constitution of the United States; (3) it offends against that provision of the Sixth Amendment to the Constitution of the United States, which provides that, "in all criminal prosecutions, the accused

shall enjoy the right * * * to be informed of the nature and cause of the accusation; (4) the indictment, if the inducement and means alleged are urged as the charging part of it, is fatally duplicitous, in addition to being subject to the same infirmities alleged under (1), (2) and (3) hereof; (5) the indictment leaves a doubt in the mind of the court concerning the offense attempted to be charged, and therefore is fatally defective for duplicity; and (6) the indictment construed with the inducement and the means alleged, also alleges a case where concerted action is necessary to constitute a substantive offense, and hence a conspiracy in regard thereto cannot legally exist

24

Point IV.

It was reversible error to systematically exclude from the trial jury females who were not members of a private League of Women Voters. These women were qualified and had to be drawn for such service. They were disqualified because of non-membership in this League. The members of this League were selected because of such membership and because they had attended lectures on jury service in which only the view of the prosecution of criminal cases was presented

43

Point V.

The admission of Government's Exhibits 81A and 113, containing the rankest hearsay and inflammatory statements constituted a denial of the right of confrontation of witnesses, and was palpably prejudicial

44

Point VI.

PAGE

The trial judge, in conducting the trial, was not calmly dispassionate and impartial. He participated in the trial with illegal and prejudicial activity. He not only failed sedulously to avoid all appearance of advocacy, but became an active advocate for the Government. By such attitude he clearly and definitely conveyed to the jury that the defendants were guilty as charged. By repeated cross-examinations of the defense witnesses, by, in doing so, casting aside and annihilating the rules which limit the conduct of the prosecutor on the subject, in addition to the grievances above stated, he destroyed the elementary right of the petitioners to a fair and impartial trial..... 51

a. Court's re-direct examination of Government witness Elmer Swanson 52

b. Court's examination of co-conspirator Frank Hodorowicz, a Government witness 52

c. Judge's interference with cross-examination of Government witness Dewes 52

d. Judge's interruption of the cross-examination of petitioner, and by words that clearly had that effect, indicating his disbelief in the truth of petitioner's testimony 53

e. The interruption of the cross-examination of petitioner Roth and by questions and attitude on the part of the Judge, his indication in his disbelief in the testimony of that petitioner 53

f. The Judge's cross-examination of petitioner Roth beyond his judicial authority in regard to a matter immaterial to the issue 53

g. The Judge collaborated with the Assistant District Attorney in discrediting before the jury Federal Judge Igoe, a witness for petitioner, and at the same time permitted the Assistant to testify not under oath to matters which were most damaging to petitioners. 53

h. The Judge cross-examined petitioner Glasser in regard to one Nick Abesketes 54

i. The Judge ordered certain records, immaterial to the case, and after reading from them to the jury, said: I happen to know all about Nick Abesketes.... 54

j. The Court cross-examined Government witness Del Rocco and adduced the statement that certain money alleged to have been given was according to the statement of defendant Horton to be given to Red, the purpose being to show that "Red" was the petitioner Glasser 54

k. The Judge examined Government witness Frank Hodorowicz and developed a hearsay statement that money for "fixing" purposes was given to petitioner to be given to Red. The Court developed by his questioning that by "Red" was meant the petitioner Glasser 55

l. The Judge interfered with the examination of Government witness Anthony Hodorowicz and put words into the witness' mouth that were not his..... 55

m. The Judge's rehabilitation of Government witness Silvian White after he had been examined and cross-examined 56

n. The Judge took the examination of Government witness Swanson away from the Assistant District Attorney in regard to an alleged failure of prosecution of an alleged case, and asked the witness whether the case "just dropped out of thin air"..... 57

o. The prejudicial remark of the Judge to United States Commissioner Walker, "Of course, all you observed was their conduct in your court room"..... 58

p. The Judge interfered with the examination of Ellis as to a report given Glass (the report, we may assume, contained in Exhibits heretofore referred to) and asked in effect whether such reports had been submitted to the grand jury 58

q. The highly improper cross-examination of Government witness May Jerkus by the Court..... 58

r. The intimidating attitude of the court toward the witness for the Government, Stanley Slesur, and his cross-examination of this witness 59

s. The cross-examination of Government witness Wroblewski, by the Court, in relation to the circumstances under which the witness met the petitioner Roth 61

t. The Court seizing upon a statement by Government witness Swanson that petitioner Kretske told him that it was "hot in the Federal Building," collaborated with the prosecutor in this sketch:

"The Court: What is that? It was hot over in the Federal Building, or something like that?"

To which interlocution there was this answer from the prosecutor:

"That is not climatically speaking; you do not mean that, do you, Judge?"

Then, explanatorily, but not interlocutorily, the Judge to the witness:

"What do you understand to mean, by the heat was on?"

"A. Well, the heat was on them.

"By that what do you mean?

"A. Well, that they were being watched or something like that"..... 63

u. The statement by the Court that Government witness Clem Dowiat was reluctant and upon this false basis, permitting the prosecutor to "refresh" his recollection, and the cross-examination by the Court of this very willing Government witness..... 63

v. The examination by the Court of Gordon Morgan, who testified as to the number of true bills returned by the grand jury as a result of an investigation of the matters attempted to be charged in the indictment in which petitioner Glasser represented the Government. In this examination, the Court said to the witness:

"That is the total number of cases presented?"

A. By Mr. Glasser.

Q. To the Grand Jury?

A. Yes, sir.

Q. And of the twenty, there were twelve no bills?

A. Yes, sir." 65

w. The court stated to the Jury that Government witness Brantman was an unwilling witness, when it was clear that he was an eager witness as regards matters that didn't make him an accomplice, which he clearly was 65

x. The Judge's interference with the examination of Frank Hodorowicz by verbally assuming that Hodorowicz should be led by leading questions..... 65

y. The Judge's cross-examination of the petitioner Glasser in regard to his preparation for membership in the bar 66

Point VII.

	PAGE
The Judge imposed such limitations on the right of petitioner and petitioners as (a) to fatally prejudice them in their defense, and (b) to constitute a denial of due process of law	70

Point VIII.

It was reversible error to cross-examine the witnesses for petitioners far beyond the subject matter and time embraced by their direct examination.....	72
---	----

Point IX.

The prosecutor committed reversible error through the following conduct: (a) by leading questions persistently put in the mouths of accomplice witnesses, that were vital to the prosecution and fatal to the defense, and in that manner substituted the testimony of the prosecutor for that of an accomplice witness; (b) upon cross-examination by repeatedly putting to a petitioner (then defendant), while on the witness stand, absolutely unnecessarily the same question for the purpose of emphasis, in regard to most material matter	73
---	----

Point X.

It was reversible error for the Court (a) to admit a prejudicial act disconnected with the conspiracy charged; (b) to admit in evidence against petitioners a highly prejudicial statement, act or declaration made by another alleged conspirator; and (c) to exclude important evidence operating in behalf of the defendants	82
---	----

Point I.

The petitioner was denied due process of law because the grand jury which returned the indictment was illegally constituted and void, because of the intentional, total exclusion of the female sex from the jury-box from which the grand jury were drawn, the state law making it mandatory that women be placed on the jury list. (Reasons, Petition, pp. 4-5.)

Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1075.

Pierre v. Louisiana, 306 U. S. 354, 83 L. Ed. 757.

Smith v. Texas, 311 U. S. 128, 85 L. Ed. 106, 108.

U. S. v. Standard Oil Co., 170 Fed. 988, 993-995.

U. S. v. Murphy, 224 Fed. 554, 566.

Crowley v. U. S., 194 U. S. 461, 48 L. Ed. 1075.

People v. Mack, 267 Ill. 481.

People v. Wolfe, 352 Ill. 109.

People v. Cochran, 313 Ill. 508.

People v. Schraeberg, 347 Ill. 392.

People v. Green, 329 Ill. 576.

People v. Mankus, 292 Ill. 435, 438.

People v. Lembke, 320 Ill. 553.

Marsh v. People, 226 Ill. 464.

Sec. 25, Chap. 78, Ill. Rev. Stat. (set out in Appendix, p. 87).

Sec. 1, 1939 Ill. Rev. Stat., p. 1929.

Sec. 2, 1939 Ill. Rev. Stat., p. 1933.

The section of the statute above cited requires that the names of women be placed in the jury box to be drawn for jury service. The laws of the United States require the Federal Grand Jury of the Northern District of Illinois, Eastern Division, to be drawn in the same manner. (*Crowley v. U. S.*, 194 U. S. 461, *supra*; *U. S. v. Murphy*, 224 Fed. 554, 566, *supra*.) There was no attempt to com-

ply with the mandatory provision of the law requiring the names of women jurors to be placed on the jury lists and drawn for grand jury service. This, upon the foregoing authorities, made void the grand jury which returned the indictment in question.

Point II.

The petitioner was illegally put upon trial upon a record which absolutely fails to show that the indictment, which was the basis of the charge against him, was returned by the grand jury into court. (Reason 2, Petition, p. 4).

Renigar v. U. S., 172 Fed. 646 (C. C. A. 4).

Green v. State, 19 Ark. 178.

Felker v. State, 54 Ark. 489.

Holcomb v. State, 31 Ark. 427.

Goodson v. State, 29 Fla. 511, 524-26, 10 S. Rep. 738, 36 A. S. R. 135.

Samson v. State, 124 Ga. 776.

Jackson v. State, 21 Ind. 79.

Heacock v. State, 42 Ind. 393.

Laura v. State, 26 Miss. 175.

Hardy v. State, 1 Tex. Ct. App. 556.

Simons v. Commonwealth, 89 Va. 156.

Chappel v. State, 16 Tenn. (8 Yerger) 166.

U. S. v. Levally, 36 Fed. 687.

Kelly v. People, 37 Ill. 157.

Yundt v. People, 65 Ill. 373.

Aylesworth v. People, 65 Ill. 373.

People v. Gray, 261 Ill. 140.

The Government, in its brief resisting the application for certiorari, thus stated its position in regard to this assignment of error:

“Petitioners contend (Glasser, pp. 26-28; Kretske,

pp. 13, 20; Roth, pp. 26-28) that the record fails to disclose that the indictment was returned in open court by the Grand Jury, and that, hence, the District Court erred in overruling their motion to quash, made on that ground. (R. 42, 141-149, 151.) We submit that the Circuit Court of Appeals correctly held this contention to be without merit. (R. 1118-1119.)

"The placita (R. 1) discloses the convening of the District Court for the Northern District of Illinois, Eastern Division 'on the first Monday of September (1939) (it being the twenty-ninth day of September the indictment was filed),' and recites the presence of the various judges of the Court, including District Judge Stone, who sat as a member of the Court by designation, and who tried the instant case, the Marshal, and the Clerk. On the face of the indictment in the Clerk's own handwriting 'Filed in open court this 29 day of September, A. D. 1939, Hoyt King, Clerk,' preceded by the notation 'A true bill filed. A true bill, George A. Hancock, Foreman.' (R. 38.) *These records*, which, of course import verity, sufficiently disclose, in our opinion, that the indictment was returned by the Grand Jury in open court."

The Government then attempts to nullify the case of *Renigar v. U. S.*, 172 Fed. 646, 647 (C. C. A. 4), *supra*, by this assertion:

"It will be seen that in contrast with the clerk's entry 'filed' in *Renigar v. United States*, 172 Fed. 646, 647 (C. C. A. 4th), cited by the petitioners, the entry of the clerk in the instant case was 'Filed in open court'. Obviously, if the indictment had not been returned in the usual manner, but had been merely handed by the foreman of the grand jury to the clerk, the clerk's entry would simply have been that the indictment was 'filed', as in the *Renigar* case. There is no proof that the indictment was not returned in open court."

Against this view, the authorities on this particular subject have established a "tradition, unbending and inveterate", to use the words of the late Justice Cardozo.

Every authority cited on this point rises invincibly against it. We shall consider but a few of these.

In *Holcomb v. State*, 31 Ark. 427, the very same entry as was made in the instant case appeared in the record and the Supreme Court dealt with it in precisely the same way as the Court did in the *Renigar Case*, 172 Fed. 646, *supra*. We quote the exact language of the court:

"There was an entry as follows: 'Be it remembered, that on the 20th day of April, 1876, the following indictment was filed, which is, in words and figures, to-wit:' Then follows the indictment thus endorsed: '*Filed in open court, April 20th, 1876. Jo Holcomb, Clerk,*' but it in no way appears that the indictment was delivered in court by the grand jury, or that any indictment into court by them, or that they were in court for any purpose during the term at which the indictment purports to have been found.

"This is a fatal defect, in a record involving life or liberty, as decided in *Green v. State*, 19 Ark. 178, where the point was fully discussed. For this error, the judgment of the court below must be reversed and the cause remanded, with instructions to arrest the judgment, set aside the verdict, and for further proceedings in accordance with law."

It appears further that the United States relies upon an alleged entry made by somebody, apparently on 11-7-39, showing the return of four indictments by the grand jury in open court. It does not identify the instant indictment, and by whom it was entered.

In *Felker v. State*, 54 Ark. 489, where there was a reversal because the record failed affirmatively to show that the indictment was returned into open court, the court said:

"If the grand jury in fact returned the indictment into open court, that may be shown, and the record corrected by a *nunc pro tunc* entry; but if the indictment was not in fact returned into open court by the grand jury, it should be set aside, and the defendant

held to await the action of the grand jury. *No action can be taken in the matter of amending the record in the absence of the defendant.*"

In the case of *Green v. State*, 19 Ark. 178, followed by *Holcomb v. State*, 31 Ark. 427, *supra*, the court said:

"It is true that there is no record entry copied in the transcript showing that the grand jury did return the indictment into court. Nor is there any note by the clerk on the back of the indictment of its having been returned into court, and filed, as appears in the transcript. The special certiorari issued by the clerk of Bradley Circuit Court, above referred to, commanded him to return a transcript of the record of presentment and filing of the indictment, etc. But the return to the writ contains nothing but the caption entry above copied, and a bill of costs.

"In a detached certificate the clerk states that it appears from the minutes of the court that on the 15 of September, 1856, the foreman, in the presence of the grand jury presented the indictment in court, and it was ordered to be filed, which was accordingly done. This statement of the Clerk, of course, amounts to nothing. If there was any record of fact, he should have sent a certified transcript of that, as commanded by the writ of certiorari.

"* * * Though the requisite number of grand jurors consent to the indictment, and the foreman endorses it 'a true bill', it has no legal validity until it is returned into open court by the grand jury."

In *Laura v. State*, 26 Miss. 175, the Court at page 176 said:

"No person can be subjected to punishment for any offense unless a conviction be had upon an indictment found by a grand jury of the county in which the offense was committed. The record before us contains no statement which shows directly and positively that the indictment under which the trial took place was found and returned into court. This it is indispensable the record should show, by a distinct statement, which establishes the identity of the

indictment found by the grand jury, with that which is contained in the record.

In *Kelly v. People*, 39 Ill. 157, the Court at page 158 said:

"The record in this case proceeds as follows, after giving the ordinary convening order of the court: 'This day, being the fourth day of said term of said court, the following indictment was filed in said court, to-wit:'. This is all the record as to the finding of the indictment. It nowhere shows that it was returned into open court by a grand jury, or that it was even found by a grand jury. For ought that is disclosed by the record, the so-called indictment may have been placed upon the files of the court by some private person. The motion in arrest of judgment should have been sustained. *Gardner v. The People*, 20 Ill. 157."

Point III

(See third reason for the allowance of the writ, page 4, Petition.)

A—The count of the indictment upon which conviction was had in this case is vague, indefinite and uncertain, and did not advise the petitioner of the charge which he had to meet with reasonable particularity as to persons, time, places and circumstances, and is therefore fatally defective.

B—Owing to this vagueness, etc., the petitioner was deprived of a fundamental right under Article V of the Amendments to the Constitution of the United States, which so far as applicable, provides that "no person for the same offense shall be twice put in jeopardy of life and limb", the indictment being so vague, etc., that the same could not be pleaded in a second prosecution of petitioner for the same offense.

C—It offends against the Sixth Amendment to the Constitution which provides that "in all criminal prosecu-

tions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation”.

U. S. v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588.

U. S. v. Britton, 108 U. S. 205, 27 L. Ed. 698.

Pettibone v. U. S., 148 U. S. 197, 37 L. Ed. 419.

U. S. v. Hess, 124 U. S., 483, 31 L. Ed. 516.

Asgill v. U. S., 60 Fed. (2d) 78 (C. C. A. 4).

McKenna v. U. S., 127 Fed. 88 (C. C. A. ...).

Anderson v. U. S., 260 Fed. 557 (C. C. A. 8).

Fleisher v. U. S., 302 U. S. 218, 82 L. Ed. 208.

Bartkus v. U. S., 21 Fed. (2d) 425 (C. C. A. 7).

Middlebrook v. U. S., 43 Fed. (2d) 244 (C. C. A. 5).

Brown v. U. S., 21 Fed. (2d) 827 (C. C. A. 5).

Brown v. U. S., 299 Fed. 10 (C. C. A. 3).

Hilt v. U. S., 279 Fed. 421 (C. C. A. 5).

Conrad v. U. S., 127 Fed. 798 (C. C. A. 5).

Sala v. U. S., 104 Fed. 544 (C. C. A. 9).

U. S. v. Murphy, 50 Fed. (2d) 455 (D. C. S. D. Ala.).

U. S. v. Eisenminger, 16 Fed. (2d) 816 (D. C. Dela.).

U. S. v. Geraci, 280 Fed. 256 (D. C. S. D. Fla.).

U. S. v. Dowling, 278 Fed. 630 (D. C. S. D. Fla.).

U. S. v. Sam Wing, 254 Fed. 500 (D. C. N. D. Calif.).

In re Benson, 58 Fed. 962 (C. C. A. Calif.).

U. S. v. Milner, 36 Fed. 890.

U. S. v. Reichelt, 32 Fed. (2d) 152 (C. C. Calif.) (opinion by Justice Field of the United States Supreme Court).

Commonwealth v. Hunt, 4 Metcalf (Mass.) 111, 36 Am. Dec. 346.

D—The indictment, if the inducement and means alleged are urged as the charging part of it, is fatally

duplicitous, in addition to being subject to the same infirmities alleged under A, B and C hereof.

Creall v. U. S., 21 Fed. 690 (C. C. A. 8).

Ammerman v. U. S., 216 Fed. 326 (C. C. A. 8).

Bratton v. U. S., 73 Fed. (2d) 795 (C. C. A. 10).

U. S. v. Armstrong, 265 Fed. 683, 695 (D. C. Ind.).

U. S. v. Am. Naval Stores Co., 186 Fed. 592 (D. C. Ga.).

U. S. v. Dembowski, 252 Fed. 894.

E—The indictment also leaves a doubt in the mind of the Court concerning the offense intended to be charged, and therefore is fatally defective for uncertainty.

Bratton v. U. S., 73 Fed. (2d) 795, *supra*.

F—The indictment, construed with the inducement and the means alleged, also alleges a case where concerted action is necessary to constitute a substantive offense, and hence a conspiracy in regard thereto cannot legally exist; and, is, therefore, fatally defective.

U. S. v. Sager, 49 Fed. (2d) 725 (C. C. A. 2).

U. S. v. Hagan, 27 Fed. Supp. 814 (D. C. Ky., June 2, 1939).

U. S. v. N. Y. C. & H. R. R. Co., 146 Fed. 298.

U. S. v. Dietrich, 146 Fed. 664.

The charging part of the count of the indictment upon which conviction was had, and which is the subject of this attack, is to be found at page 28 of the Record, and will be stated verbatim later in this argument. We assert that this sole charging part of the indictment, when tested by the foregoing authorities is fatally vague, insufficient, indefinite, general, and lacking in essential fact averments. As a result, petitioner was deprived of the fundamental rights above referred to, as this analysis of some

of the cases cited under this point, we believe will make manifest.

In *U. S. v. Cruikshank*, 92 U. S. 452, 23 L. Ed. 588, *supra*, this Court thus states the determinative rule regarding such an indictment:

“In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right ‘to be informed of the nature and cause of the accusation.’ Amend. VI. In *U. S. v. Mills*, 7 Pet. 142, this was construed to mean, that the indictment must set forth the offense ‘with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged;’ and in *U. S. v. Cook*, 17 Wall. 174, 21 L. Ed. 539, that “Every ingredient of which the offense is composed must be accurately and clearly alleged.’ It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, ‘includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species; it must descend to particulars.’ 1 Arch. Cr. Pr. and Pl. 291. The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place and circumstances.”

This rule was applied by the Circuit Court of Appeals for the Sixth Circuit in *McKenna v. U. S.*, 127 Fed. 88, *supra*, under this same statute, which provides:

“If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free

exercise and enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, . . . shall be, etc.”

The indictment in that case, though infinitely more ample in its fact averment and particularization, was held fatally bad on demurrer. The indictment pleaded in considerable detail the means by which the conspiracy was to be effected, but the Court held that this did not aid the indictment, as these means did not constitute any part of the offense. The Court at page 91 said:

“When the fact which is made by the statute an essential element of the crime is a collective or general one, it is necessary to specify the particular thing intended to be charged. This for several reasons: (1) To enable the court to see whether the particular fact is of the character intended by the general language of the statute—this is the province and duty of the court, and cannot be passed over by the conclusion of the pleader; (2) to apprise the respondent of the particular fact intended to be charged, in order that he may come prepared to meet it, and not be compelled to array a defense to all manner of charges which might be comprehended in the general words of the statute; and (3) that it may be known what the judgment covers, and to what extent it is a bar to further prosecution. *Cruikshank v. United States*, 92 U. S. 542, 23 L. Ed. 588.

“It would be difficult to find a case more fit for the application of this rule, for the rights and privileges enjoyed by the public under the laws and Constitution of the United States are manifold. This indictment does not allege (what is sought to be attributed to its language) that the right or privilege was that of voting for a member of Congress. It is true it states that certain things were done by the conspirators in pursuance of the plot. But this is no part of the offense. All that can be said of it is that it furnishes an inference as to what the conspiracy was. But this does not meet the requirement of proper pleading, the rule being that the offense must be directly charged, and cannot be made out by infer-

ence or implication. *United States v. Britton, supra*; *Pettibone v. United States, supra*. How is it to be known whether the things alleged to have been done were in pursuance of the conspiracy? The conspiracy itself not being pleaded, the court cannot judge whether the things done have relation to it. It is the inference of the pleader. In the latter part of the indictment this mode of pleading is repeated. After alleging that an election was being held, it is charged that the defendants conspired with others for 'the purpose aforesaid.' This must refer to the purpose of injuring the persons named in the exercise of a right secured to them, stated in the earlier part of the indictment, to which we have already referred, for no other purpose is 'aforesaid.' Then, next, it is alleged that, 'in pursuance of said conspiracy,' and to carry it out, the defendants did certain things, which are enumerated, as evidential facts in proof that what they did tended to injure the voters in the exercise of their right or privilege to vote. It is obvious that this is only a repetition of the charge of a conspiracy to injure some right (not stated) secured, etc., and of the allegation of things done in pursuance of it. The cases above referred to seem decisive in respect of the sufficiency of this indictment."

In *Anderson v. U. S.*, 260 Fed. 557 (C. C. A. 8), the Court had before it a conspiracy indictment of a generality similar to that characterizing the indictment in the instant case. "The charging part", said the Court, "was as follows:

"That (defendants' names omitted), on the 8th day of November, in the year 1917, in said division of said district, and within the jurisdiction of said court, did then and there unlawfully, willfully and feloniously conspire, confederate and agree among themselves to commit an offense against the United States; that is to say, to steal from a certain railroad freight car certain goods then and there moving and constituting a part of an interstate shipment of freight, with intent then and there to convert said goods to their own use."

The Court, after citing the *Cruikshank*, *Britton* and *Pettibone* cases (92 U. S. 542 and 103 U. S. 205, 148 U. S. 197, respectively) and stating the rule they asserted, applied it to this indictment at page 558, the Court said:

"Standing alone, we are of the opinion that the above-quoted language from the indictment wholly fails to comply with the rules of criminal pleading. To illustrate: the words 'certain railroad freight car' might apply to any one of the vast number of freight cars in existence in the United States, or in the world, for that matter; and for the same reason the words 'certain goods' might apply to any kind of the thousand varieties of property. The car of goods might be moving in interstate commerce on any railroad in the United States and between any two of the great number of towns existing in different states. The word 'steal', as used in the statute, is used as equivalent to the word 'larceny'. In order to establish the crime of larceny several elements must be established. The defendant, if convicted or acquitted on this indictment, could not plead the conviction or acquittal in bar, as far as the indictment was concerned, if he was again indicted for the same offense, because the offense was not identified. We are therefore clearly of the opinion that the charge of conspiracy is fatally defective when standing alone."

The Court then examined the matters alleged as means or overt acts alleged as executed pursuant to the charged conspiracy, and held that they could not be permitted to aid the indictment; consequently it was fatally defective.

It will be seen that the Court followed on this point, among other cases, *U. S. v. Britton*, 108 U. S. 199, 27 L. Ed. 698, in which the Court at page 205, 108 U. S., said:

"The offense charged in the counts of this indictment is a conspiracy. This offense does not consist of both the conspiracy and the acts done to effect the object of the conspiracy. The provision of the stat-

ute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus penitentie*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute. It follows as a rule of criminal pleading that in an indictment for conspiracy under Section 5440, the conspiracy must be sufficiently charged and it cannot be aided by the averment of acts done by one or more of the conspirators in furtherance of the acts of the conspirators."

The Supreme Court in this case (Britton Case) passed upon the same statute involved in the instant case, namely, Title 18, Section 88, which is as follows:

"If two or more persons conspire either to commit an offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both."

The Supreme Court Cases heretofore cited are relied upon by the Circuit Court of Appeals of the Fourth Circuit in *Asgill v. U. S.*, 60 Fed. (2d) 780, in considering an indictment under the same statute, an indictment very much in its frame and allegations like the one in the instant case; and it was for the reasons we here urge held bad. At page 784 the Court said:

"While given full effect not only to the letter but to the spirit of the statute, it must be read in connection with the Sixth Amendment to the Constitution, which requires that the defendant be informed of the nature and cause of the accusation, this information to be set out through an indictment by the grand jury as guaranteed in the Fifth Amendment. Neither the statute nor the decisions was or were intended to qualify or amend, nor could they qualify, amend, or set aside these provisions of the Constitution. As was well said in the case of *State v. Van Pelt*, 136 N. C.

633, 49 S. E. 177, 180, 68 L. R. A. 760, 1 Ann. Cas. 495 (a conspiracy case): 'No offense is so easily charged and so difficult to be met unless the defendants are fully informed of the facts upon which the state will rely to sustain the indictment. While technical objections to indictments are not to be sustained, substantive and substantial facts should be alleged. General and undefined charges of crime, especially those involving mental conditions and attitudes, should not be encouraged. They are not in harmony with the genius of a free people, living under a written constitution. We can see no good reason why an exception to the general rules of criminal pleading should be made in favor of this crime.' The essential and not merely technical requirements of indictments under the guaranties of the Constitution in general and as to conspiracy charges in particular have been outlined in almost countless cases that have reached the Supreme Court and other courts, and there is practical unanimity in these decisions. As stated in *Pettibone v. United States*, 148 U. S. 197, at page 202, 13 S. Ct. 542, 545, 37 L. Ed. 419: 'The general rule in reference to an indictment is that all the material facts and circumstances embraced in the definition of the offense must be stated, and that, if any essential element of the crime is omitted, such omission cannot be supplied by intendment or implication. The charge must be made directly, and not inferentially, or by way of recital'—citing *United States v. Hess*, 124 U. S. 483, 486, 8 S. Ct. 571, 31 L. Ed. 516. In the case of *United States v. Cruikshank*, 92 U. S. 542, 558, 23 L. Ed. 588, after reiterating the constitutional right of the accused to be informed of the nature and cause of the accusation, the court quotes with approval the cases of *United States v. Mills*, 7 Pet. 142, 8 L. Ed. 636, and *United States v. Cook*, 17 Wall. 174, 21 L. Ed. 538, to the effect that the indictment must set forth the offense 'with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged,' and that 'every ingredient of which the offense is composed must be accurately and clearly alleged,' and that 'it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it

must state the species; it must descend to particulars'—citing 1 Arch. Cr. Pr. and Pl. 291. And for this reason, 'facts are to be stated, not conclusions of law alone.' In *United States v. Robinson et al.* (D. C.) 266 F. 240, after citing numerous cases, the court quotes from *Bishops New Criminal Procedure*, § 331, to the effect that the facts in allegation must be the primary and individualizing ones. See also, 3 *Foster Fed. Pr.* § 497, p. 2633."

In *Larkin v. U. S.*, 107 Fed. 697, *supra*, an indictment was held fatally bad which charged the use of the mails, in violation of Rev. St. 5480, as amended by Act of March 2, 1889, because it failed to charge a scheme to defraud the public generally or a class not capable of being resolved into individuals, but clearly importing an intention to defraud definite individuals, not described by name, nor a good and sufficient reason given for their omission. This case is founded upon *U. S. v. Hess*, 124 U. S. 483, 31 L. Ed. 416, *supra*. All the other cases cited upon this point are to the same effect, and deal with indictments charging conspiracy of the same type and character as the instant indictment, and in each case the indictment was held bad for the reasons there urged and which we urge here.

Applying the foregoing authorities to the charging part of the count of the indictment we are assailing, we have these allegations, seeking to charge an offense under a statute phrased in terms of the utmost generality. Of course, it is needless to add that the emphases interspersed in the charging part of the indictment are ours. This count alleges that the defendants, "well-knowing the premises aforesaid, in the City of Chicago in the State and District aforesaid, and at other places to the grand jurors unknown, heretofore, on to-wit, March 15, 1935, and thereafter continuously up to the date of the return of this indictment, in violation of the provisions of Sec-

tion 88, Title 18 of the United States Code of Laws, did willfully, unlawfully and feloniously conspire, combine, confederate and agree together, and with each other, and with divers other persons to the grand jurors unknown, to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States (what courts?) by a United States Attorney or an Assistant United States Attorney to prosecute certain delinquents (what or what class of delinquents?) for crimes and offenses cognizable under the authority of the United States (what crimes: most crimes are cognizable by the states alone) as the same should be presented and determined according to law and justice, (determined by whom or what body?) free from corruption, improper influence, dishonesty or fraud (no facts to show what these terms consisted of), more particularly its right to a conscientious, faithful and honest representation of its interests in certain suits, controversies, proceedings, matters, actions, and causes (what are these?) brought and pending in the United States District Courts in the Northern District of Illinois (brought by whom and pending in what courts of the Northern District of Illinois?); that is to say, by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States (what officer?), and to persons acting for and on behalf of the United States (what persons or class of persons?) in an official function (what official function?), under and by authority of a department and office of the Government of the United States (what department or office, for they are legion?), with intent to influence his decision and action on certain questions, matters, causes and proceedings which were at times pending, and which were by law brought before such officer or officers in his or their official

capacity (what were these certain questions, matters, causes and proceedings, and who was the officer or who were the officers?), and with the intent to influence such officer or officers to commit and aid in committing, and to collude in committing certain frauds on the United States, (what were these certain frauds?) and to induce such officer or officers to do and to omit from doing certain acts (what acts?) in violation of his or their lawful duty (what was their lawful duty?).”

Testing these allegations by the foregoing authorities as above observed, it is clear that they are fatally defective, for the reasons therein stated.

But if it is sought to support the indictment by extending its charging part to the matters pleaded by way of inducement, embraced by Paragraphs 1 to 13 and Paragraphs 15 to 39, which paragraphs are connected together by this allegation at pages 34 and 35 of the Record:

“That the persons whose names appear in paragraph 12 of this indictment are the persons referred to in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 33, 34 and 35 of this indictment as ‘certain persons hereinafter referred to’ which said paragraph 12 is incorporated in the paragraphs mentioned immediately aforesaid by specific reference hereto, the same as if said names appeared therein”;

such effort would clearly fail.

It would take up too much space to reduce to the most narrow compass conceivable the allegations or statements of what we call the inducement and the means thus connected. Suffice it to say, all the allegations are clearly reducible to a charge of violations of Title 18, Section 91. These statements or allegations in substance are that both Glasser and Kretske during the time covered by the indictment, were Assistant United States Attorneys for the

Northern District of Illinois, and as such, at all times covered in this indictment, had certain decisions to make and actions to take on certain questions, matters, causes, and proceedings which were from time to time pending and which were from time to time brought before him in the performance of their official duties. (Rec. 22, 23.)

After charging the alleged conspiracy we have been considering, it is alleged at page 29:

“That the conspiracy, combination, confederation, and agreement aforesaid was to be accomplished in the manner and means following:”

These means summarized were these:

1—Paragraph 15 alleges that money was to be solicited to be promised to Daniel D. Glasser and Norton I. Kretske, to corrupt them “in their official capacity in their decisions and actions on certain questions, matters, causes and proceedings which were at a certain time or times covered by this indictment by law brought before said Daniel D. Glasser and Norton I. Kretske in their official capacity for their decision and action.”

2—Paragraph 16 is substantially the same as the preceding paragraph.

3—Paragraph 17 alleges the defendants were to solicit money to influence these persons, with the intent and purpose that they, said defendants, would accept and use said money “to corruptly, wrongfully, and improperly influence the said Daniel D. Glasser and Norton I. Kretske, defendants, to dishonestly and wrongfully, and in violation of their lawful duty, aid the defendants in committing a certain fraud on the United States.”

4—Paragraph 18. That certain persons referred to would be solicited to promise certain sums of money to the defendants, Daniel D. Glasser and Norton I. Kretske, to

be used to corruptly and wrongfully influence the said Daniel D. Glasser and Norton I. Kretske "to collude in a fraud on the United States."

5—Paragraph 19. The same charge is repeated here, except the purpose was to "corruptly, wrongfully and improperly influence the said Daniel D. Glasser and Norton I. Kretske to allow a fraud to be committed on the United States."

6—Paragraph 20 alleges that the money was to be solicited "to corruptly, wrongfully and improperly influence the said Daniel D. Glasser and Norton I. Kretske in their official capacity to dishonestly, wrongfully, and unlawfully make opportunity for the commission of a fraud on the United States."

7—Paragraph 21 charges an agreement to solicit money, "with the intent to use said money to corruptly, wrongfully, and improperly induce the said Daniel D. Glasser and Norton I. Kretske to do certain acts in violation of their lawful duties as Assistant United States Attorneys."

8—Paragraph 22 charges that money was to be solicited "with the intent to use said money to corruptly, wrongfully, and improperly induce said Daniel D. Glasser and Norton I. Kretske in their official capacity to omit to do certain acts, in violation of their lawful duty as Assistant United States Attorneys."

9—Paragraph 23 charges that money was to be solicited to be promised to be paid to the defendant Daniel D. Glasser, in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence the said Daniel D. Glasser "to dishonestly, wrongfully, and unlawfully collude in a fraud on the United States."

10—Paragraph 24 charges that money was to be solicited to be promised to be paid to the defendant, Daniel

D. Glasser, "in his official capacity aforesaid, with the intent to corruptly, wrongfully, and improperly influence said Daniel D. Glasser to allow a fraud to be committed on the United States."

11—Paragraph 25 charges that money was to be solicited to be promised to be paid to the defendant, Daniel D. Glasser, "in his official capacity aforesaid, with the intent to corruptly, wrongfully and improperly influence said Daniel D. Glasser to dishonestly, wrongfully, and unlawfully make opportunity for the commission of a fraud on the United States."

12—Paragraph 26 charges that money was to be solicited to be promised to be paid to the defendant Daniel D. Glasser in his official capacity aforesaid, and with the intent "to corruptly, wrongfully, and improperly induce said Daniel D. Glasser to dishonestly, fraudulently, and unlawfully do certain acts in violation of his lawful duty as Assistant United States Attorney."

13—Paragraph 27 charges that money was to be solicited to be promised to be paid to the defendant, Daniel D. Glasser, in his official capacity, "with intent to corruptly, wrongfully, and improperly induce said Daniel D. Glasser to omit to do certain act or acts in violation of his lawful duty as an Assistant United States Attorney."

14—Paragraph 28 charges that money was to be solicited to be used "to corruptly and wrongfully induce and persuade the said defendants, Daniel D. Glasser and Norton I. Kretske, to unfaithfully discharge their duties toward the United States as Assistant United States Attorneys, and that they, the defendants, would be found not guilty and discharged."

15—Paragraph 29 charges that money was to be solicited to be promised to be paid to said Daniel D. Glasser and Norton I. Kretske in their official capacities "to cor-

ruptly and wrongfully induce the said Daniel D. Glasser and Norton I. Kretske to make their decision so that they, the said persons, would not be charged with a violation of the laws of the United States."

16—Paragraph 30 charges that money was to be solicited which was to be promised to be paid to the defendants, Daniel D. Glasser and Norton I. Kretske, in their official capacity, "to cause them, the said Daniel D. Glasser and Norton I. Kretske, to unlawfully commit a fraud on the United States by going before the United States Commissioner and making a certain legal motion to dismiss said charges."

17—Paragraph 31 charges that money was to be solicited to "induce said Daniel D. Glasser to withhold from the Grand Jury certain facts establishing their connection with the alleged offense which said grand jury was inquiring about, and as a result of said failure on the part of the defendant, Daniel D. Glasser, to properly perform his lawful duty, the Grand Jury would not have before it sufficient facts to legally warrant their returning a true bill against said persons and they would be compelled to return a no bill."

18—Paragraph 32 charges that money was to be solicited to be used "to influence said Daniel D. Glasser so that he would corruptly render his judgment and decision affecting the prosecution of said persons."

19—Paragraph 33 charges that the defendants, with the exception of Glasser, would contact certain persons "hereinafter named who were defendants in certain criminal proceedings wherein the United States was plaintiff and they, the said persons, were defendants, and in form said defendants that for certain sums of money paid to them they, the said defendants, would corruptly influence said defendant, Daniel D. Glasser, who did appear from time to

time in the various court rooms before the various District Judges representing and acting for and on behalf of the United States in his official capacity in the causes and proceedings affecting the persons hereinafter named, to delay, continue, and unduly prolong said proceedings to the end that the various witnesses called to testify in said causes and proceedings would become discouraged and disheartened and would cease to have interest in said proceedings and would fail to remember the parties defendant or the part they took in said violation and as a result thereby the said trial and proceedings would be unduly delayed and a fraud would be committed on the United States."

20—Paragraph 34 charges that all of the defendants except Glasser would contact persons about to be or who believed that they were about to be charged with a violation of the laws of the United States, and inform them "that for a certain sum of money paid by the said persons referred to as aforesaid, they would make certain arrangements with the said Daniel D. Glasser to the end that the said charges made or to be made against said person or persons charged, to be charged, or who believed that they were to be charged with violating the laws of the United States, would not be made or brought against them by the United States."

21—Paragraph 35 charges that all of the defendants except Glasser would contact certain persons and solicit money from them which was to be paid to Daniel D. Glasser "to influence him in his official capacity in his decisions and actions on the certain questions, matters, causes, and proceedings which were brought or to be brought against the said persons, that is to say, it was part of said conspiracy that the said Louis Kaplan, Anthony Horton, otherwise known as Tony Horton, and Norton I. Kretske,

would contact said persons and tell them that for a certain sum of money paid to them they would arrange with the said Daniel D. Glasser that he, Glasser, do certain acts in violation of his, the said Daniel D. Glasser's, lawful duty as an Assistant United State's Attorney, and they would promise said persons that they, said persons, would be held harmless from prosecution.

22—Paragraph 36, as we have seen, seeks to connect the inducement with these allegations.

23—Paragraphs 37 and 38 alleges in the most general terms certain other acts to be executed and performed pursuant to the alleged conspiracy, such as meetings, discussions, concerning information in regard to it and its various phases and stages.

It will thus be seen, from this analysis, that these allegations are more general than those contained in what we term the charging part of the indictment. They are controlled by the authorities above cited, and like it, must fall if it can be admitted that they may be invoked to aid this charging part.

But conceding, only for the purpose of this immediate discussion, that they may be considered as allegations of an offense against the United States, they contain the language, not of Section 88, Title 18, but that of Section 91, Title 18, which is as follows:

“(Criminal Code, Section 39.) Bribery of United States officer—Whoever shall promise, offer, or give or cause or procure to be promised, offered, or given any money or thing of value, or shall make or tender any contract, undertaking, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the government thereof * * * with intent to influence his de-

cision or action on any question, matter, cause or proceeding which may at any time be pending, or which may be by law brought before him in his official capacity, or in place of trust or profit, or with intent to influence to commit or aid in committing, or collude in, or allow any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be," etc.

It will be noted that the allegations we have immediately been considering are in the very language of this act, repeated over and over again, and if they may be considered as charging any offense, which is denied, they can be considered as charging a conspiracy to violate not Section 88, *supra*, but Section 91, *supra*. Testing these allegations by the facts pleaded, we have an attempt to charge in this count a conspiracy to defraud the United States in violation of Section 88, *supra*, an attempt to charge a conspiracy to commit an offense against the United States under the same statute, considered in connection with Section 91, *supra*.

Notwithstanding the pleader states in the count that it is brought under Section 88, *supra*, this must yield to the words employed in charging the offense; for in determining the validity of an indictment, the facts alleged and not statutes mentioned by the pleader determine what, if any, statute is violated. (*Williams v. U. S.*, 168 U. S. 382, 42 L. Ed. 509; *Outlaw v. U. S.*, 81 Fed. (2d) 805 (C. C. A. 5).)

This indictment is further defective in that it attempts to allege a crime where concerted action is necessary to accomplish the substantive offense, which is the alleged object of the conspiracy, hence a conspiracy to commit it could not exist. Therefore, it was fatally defective in this respect. (See authorities cited above under this point, especially *U. S. v. Sager*, 42 Fed. (2d) 725.)

And, as above shown, the indictment also attempts to charge in one count two separate offenses, and is therefore fatally defective, as being duplicitous. (See authorities cited upon this point.)

And, further, as the indictment must leave a doubt in the mind of the Court concerning the exact offense intended to be charged, it is fatally defective for uncertainty. (*Bratton v. U. S.*, 73 Fed. (2d) 795 (C. C. A. 10), *supra*.)

Point IV.

The total, systematic exclusion from the trial jury box of females who were not members of a private League of Women Voters, and who had not, as members of this League, attended certain jury classes maintained for the purpose of giving instructions to potential jurors, in which lectures the views of the prosecution were presented, and the exclusion of females who otherwise possessed all of the requisite qualifications for jury service, constituted a denial of the constitutional right of trial by an impartial jury. (Reasons, Petition, p. 5.)

Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1035.

Pierre v. Louisiana, 306 U. S. 254, 83 L. Ed. 757.

Smith v. Texas, 311 U. S. 128, 85 L. Ed. 106.

U. S. v. Standard Oil Co., 170 Fed. 988, 993-995.

U. S. v. Murphy, 224 Fed. 554, 566.

In *U. S. v. Standard Oil Co.*, 170 Fed. 988, Judge Anderson, at p. 995, said:

"I don't feel under all the circumstances that the jury selected in this panel would be entirely unobjectionable. I don't mean that there is anything in the composition of it, so far as the individual men are concerned, that can be reasonably objected to; but, however this thing happened, I don't like the looks of it. I don't see any reason why the qualified jurors, peo-

ple who are qualified to be jurors, resident in Cook County, should be systematically left out of this box. I think that the jury commissioner, in putting the names in the box, ought to put in a fair proportion of qualified voters from this county. I don't want to start this trial feeling myself that something is not quite fair. I don't want to start in the trial with the defendant and its counsel feeling that there is something not quite fair about it. I feel that we ought to start fair and keep fair. At least we ought to begin fair, and I think this panel ought to be set aside."

In *U. S. v. Murphy*, 224 Fed. 554, the Court said, in discussing the same point:

"Jury lists should, so far as possible, be free from suspicion or criticism. Confidence in our courts and honest administration of the law could not otherwise be maintained."

Point V.

The admission of Government's Exhibits 81A and 113, severally, containing, as each did, rankst hearsay and highly inflammatory statements, is a denial of the right of confrontation with the witnesses whose statements appeared in said Exhibits. (Petition, p. 5.)

A—The reception in evidence of irrelevant, prejudicial, hearsay documents is reversible error.

Cook v. U. S., 138 U. S. 157, 184, 34 L. Ed. 908, 913.

U. S. v. Dressler, 112 Fed. (2d) 972 (C. C. A. 7).

Hass v. U. S., 93 Fed. (2d) 427, 436 (C. C. A. 8).

Greenbaum v. U. S., 93 Fed. (2d) 113, 125, 126, 127 (C. C. A. 9).

Paddock v. U. S., 79 Fed. (2d) 872, 873, 874 (C. C. A. 9).

Brady v. U. S., 39 Fed. (2d) 312, 314 (C. C. A. 8).

Naftger v. U. S., 200 Fed. 494, 499, 500 (C. C. A. 8).

Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6.)
People v. Goltra, 2 Pac. (2d) 35 (Cal. App.).
State v. Leopold, 110 Conn. 55, 65, 147 Atl. 118.
Commonwealth v. Lucreiti, 295 Pa. State 191,
 199, 145 Atl. 85.
Averitt v. State, 84 S. W. 482.
State v. Rombolo, 99 Atl. 434.
People v. Pellanzo, 207 N. Y. 560.
Cheney v. State, 7 Ohio 222.
People v. McGraw, 66 App. Div. 372.
Baker v. State, 120 Wis. 135, 148, 149.

B—Where a prejudicial ruling is made against or prejudicial inadmissible evidence is introduced against one alleged co-conspirator, it is likewise prejudicial as to all other alleged co-conspirators charged with that offense in the same indictment.

Logan v. U. S., 144 U. S. 263, 36 L. Ed. 429.

C—This error could not be cured by any subsequent instructions to the jury.

Waldron v. Waldron, 156 U. S. 361, 39 L. Ed. 453.

Throckmorton v. Holt, 180 U. S. 552, 55 L. Ed. 663.

Holt v. U. S., 94 Fed. (2d) 90, 94 (C. C. A. 10).
C. M. Spring Drug Co. v. U. S., 12 Fed. (2d) 852.

Exhibit 81A is a report of the Internal Revenue Service, Alcohol Tax Unit, dated July 14, 1937, case 4570-M, pertaining to Victor Raubunas, Louis Kaplan, Adam Widzes, *et al.*, concerning premises at 2524-34 South Western Avenue, Chicago, Illinois, with seizure list, together with statements of witnesses. It contains the rankest hearsay, setting forth that a man giving the name of L. Davis, later identified as Louis Kaplan, ordered four tons of coal delivered to a building with a high smoke stack at

2524 South Western Avenue. That he continued to place orders periodically up to and including May 15, 1936, at which time orders totalling 450 tons had been placed. That a still had been set up in this building. It further states that Frank Hill, to be used as a Government witness knew Kaplan for three years previous to this date. That he did not see him until the still began to operate at 2524-36 South Western Avenue, November, 1935, to June, 1936. During the period the still was operating Kaplan came to Hill's office several times. That James Brown while working at 2534 South Western Avenue, saw Kaplan come from the still room, also saw Government witness Raubunas, Clem Haydock and Edward Jawor, employees of the Pulaski Coal Company, identified Kaplan as L. Davis who had ordered coal delivered to the building with the high smoke stack at 2534 South Western Avenue. Murray Ellis saw Kaplan around the premises. Lawrence Craven saw Kaplan meet with other defendants in his gas station at 3915 Ogden Avenue. Exhibit 81A further contains the recommendation that Frank Hill, Murray Ellis and James Brown be allowed to testify on behalf of the Government. While they are more or less reluctant witnesses, it is the belief of the investigators that if they are requested to appear at the office of the United States Attorney before the trial they will testify favorably. That Lawrence Craven is also a reluctant witness and it is recommended that the same procedure be followed with him. Exhibit 81A continues as follows:

"Louis Kaplan, 3125 W. 19th St., Chicago, Ill., male, white, Jewish descent, age 55, height 5 feet 8 inches, weight 215 pounds, stocky build, married, citizenship not known, owns and operates the Kaplan Motor Sales Company, 3152 Ogden Ave., Chicago, Ill. (Automobile sales agency for the Nash car.) Reported to be worth approximately \$200,000.00, criminal record not known with exception of his reputa-

tion as a bootlegger in Chicago, Illinois. (A Louis Kaplan was arrested at 616 West Madison St., Chicago, Ill., for violation of the National Prohibition Act on May 10, 1923, and sentenced to pay a fine of \$300.00; a man by the same name was also arrested by Chicago police officers February 7, 1935, together with one Edward Dewes, in connection with the killing of Tony Pinna and seriously wounding Vito Mes-sino at Louis Kaplan's garage, 3152 Ogden Ave., Chicago, Ill., in which Louis Kaplan stated he was a victim of an attempted kidnapping and was released.)"

Exhibit 113 is a report of the Internal Revenue Service, Alcohol Tax Unit, Chicago, Illinois, dated July 2, 1937, their own case No. 4957-M, concerning violation of internal revenue laws by carrying on business of a distiller, by possession and control of a still, etc., at Spring Grove, Illinois, by Louis Kaplan, Victor Raubunas, Edward R. Dewes, Stanley Slesuraitis, Joseph F. Cole, Louis Pregonzer, Lincoln Rankin, Ralph Bogush, Joe Fernandez, and Ceil Simms, containing narrative history of evidence, seizure, statements of witnesses, chemist's report, with finger print reports of Louis Kaplan, Lincoln Rankin and Louis Pregonzer. In substance, it sets forth that Louis Kaplan is implicated by Peter Frett; that Kaplan took part in the negotiations for a lease in the old Borden Milk Plant. That he was present at the first conversation. That he went to the office with Dewes and returned to the tavern. That the person identified from pictures as Kaplan gave Dewes alias Schwahn, the money to pay for the rental of the plant. That Kaplan came to one Schnitzler's office at a lumber company in November and December of 1936, accompanied by Dewes, Slesur and Cole. That orders for coke were placed and Kaplan guaranteed payment for orders placed by any of the parties. That Sylvester Urbanski identified Louis Kaplan as visiting the premi-

ises of the Highway Tavern in Fox Lake, Illinois. That Joseph Cole says Kaplan inspected the premises in October, 1936, for erection of an illicit distillery. That he was present when Louis Kaplan gave some money to Edward Dewes who in turn gave it to Peter Frett, at which time Kaplan stated he had obtained a lease for the milk plant in Spring Grove. That Kaplan gave him instructions to purchase coke and deliver to the milk plant. Kaplan instructed him to arrange for board and room for the men who would be employed at the still and will pay him forty or fifty dollars a week for his assistance in obtaining the lease, ordering coal and boarding employees. That he heard Louis Kaplan instruct Stanley Slesur to change one of the valves and one of the steam pumps after the still was in operation. That Kaplan agreed to deliver to him 1250 gallons of alcohol as a reward for his services. That the records of the Illinois Bell Telephone Company show many calls from Fox Lake 97 to Crawford 6663, which is listed in the name of Mrs. Jenny Kaplan, 3125 W. 19th Street. That Peter Frett says he was paid \$2500.00 by Louis Kaplan; that Joe Cole says Frett got \$500.00 for his business and \$25.00 or \$30.00.

Said Exhibit 113 contains the following recommendation by agents:

"It is recommended that Defendant Cole, Fernandez and Simms be used as a witness for the government in order to strengthen the evidence against the principals Kaplan, Raubunas, Dewes and Slesur. The last four named defendants have long been identified with illicit alcohol activities in the Chicago area, and owing to their methods of operation it has been very difficult to obtain evidence for an arrest and conviction."

This Exhibit contains the same description of defendant Louis Kaplan as was appended to Exhibit 81A.

When it is recollected that Kaplan was a co-defendant in this case, and any legal evidence introduced against him would be identically the same as the legal evidence introduced against any other defendants, there remains no ground of contention that the introduction of these two exhibits was not prejudicial and reversible error as to each petitioner in this cause.

Summarizing the decisions from other jurisdictions above cited: It is a matter of general knowledge that rogues gallery pictures are taken of persons arrested for crime. (*People v. Goltra*, 2 Pac. (2d) 35 (Cal. App.), *supra*.) It is error to admit rogues gallery pictures where the descriptive matter is not thoroughly eliminated, and even where the descriptive matter is thoroughly eliminated, the picture is admissible solely for the purpose of identification, where identification is in issue. (*State v. Leopold*, 147 Atl. 118, 110 Conn. 55, 65, *supra*; *Commonwealth v. Lucreiti*, 295 Pa. State 191, 199, 145 Atl. 85, *supra*.) If there is no issue as to the identity of a co-defendant, the Government under no circumstances should be permitted to introduce his photograph. (*Averitt v. State*, 84 S. W. 482, *supra*.) Where a rogues gallery picture has been admitted containing prejudicial matter on the subject, the prejudicial matter contained on the photograph amounts to hearsay, and admission of the same is reversible error. (*State v. Rombolo*, 99 Atl. 434, *supra*.) It is reversible error upon the part of the Government to show that the defendant associated with criminals, when such is not probative of any fact in issue. (*People v. Pellanzo*, 207 N. Y. 560, *supra*; *Cheney v. State*, 7 Ohio 222, *supra*; and *People v. McGraw*, 66 App. Div. 372, *supra*.) It is clear that these exhibits were as to the appellant "*res inter alios acta*," and the admission of the same constituted reversible error. (*Baker v. State*, 120 Wis. 135, 148, 149, *supra*.)

In *State v. Leopold*, *supra*, 147 Atl. 118, 110 Conn. 55, 65, it was held that a rogues gallery photograph with the numbers on the front, and the records on the back covered with paper, were properly received in evidence for the purpose of identifying an accomplice; but as the defendant tried to show the records contained on this picture, an objection was properly sustained to this, as the picture was not the proper way of proving this record.

In *State v. Rombolo*, 99 Atl. 434, *supra*, this question was clearly decided. In it the court followed the fundamental principle that lies at the basis of the administration of criminal jurisprudence, and held that the admission of a rogues' gallery picture offended against this principle in the most obvious and definite form. The facts of this case were, briefly: in a prosecution for murder, a photograph of the defendant, purporting to have been taken while he was incarcerated in a Pennsylvania Reformatory, stating on its back that the original was in confinement under a charge of burglary, and that he had violated his parole, was introduced in evidence. It was held this was error, because the photograph thus stamped and characterized was inadmissible, the statement on the same being hearsay. On this point the Court said:

"The state produced and introduced in evidence, over the objection of the defendant, a photograph which was said to have been taken of him while he was incarcerated in a Pennsylvania Reformatory. Upon the back of this photograph were certain indorsements, among them that the original thereof was in confinement under a charge of burglary, and that he had violated his parole. We are unable to see that the photograph had any probative value, and consider that, had the contrary been the fact, the indorsements written upon it destroyed its efficacy as an instrument of evidence, for those statements are the veriest hearsay, coming from an unknown source, and not made under the sanctity of an oath. We conclude that

this photograph should have been excluded upon the objection of the defendant."

The Cases cited merely illustrate and confirm this elementary proposition and apply the elementary principle presented in the foregoing cases. They hold (1) that the admission of evidence of "*res inter alios acta*" of a serious character constitutes reversible error; (2) that serious hearsay is reversible error; that the acts, declarations, statements, or confession of a co-conspirator are not admissible, unless the act is done pursuant to the transaction charged in the indictment, and the confession is made in the presence of the accused. It will thus be seen upon this point the petitioner was deprived of those fundamental safeguards which for centuries the law has accorded every person charged with crime, regardless of who he is.

Point VI.

The trial judge, in questioning witnesses for the defense, was not calmly judicial, dispassionate and impartial. He participated in the trial with illegal and prejudicial activity, and not only failed sedulously to avoid all appearance of advocacy, but became an active advocate for the Government. By such attitude he clearly and definitely conveyed to the jury that the defendants were guilty as charged. Further, by his repeated cross-examination of defense witnesses, and in such casting aside and violating the rules on that subject, as applied to the District Attorney, deprived the appellant of a fair and impartial trial. (Petition, p. 6.)

Franz v. U. S., 62 Fed. (2d) 737, 739 (C. C. A. 6).

Hunter v. U. S., 62 Fed. (2d) 217, 220 (C. C. A. 5).

Adler v. U. S., 182 Fed. 464, 472 (C. C. A. 5).

Williams v. U. S., 93 Fed. (2d) 686 (C. C. A. 9).

Conley v. U. S., 46 Fed. (2d) 53, 54, 56 (C. C. A. 9).

Glover v. U. S., 147 Fed. 426 (C. C. A. 8).

McNutt v. U. S., 267 Fed. 671 (C. C. A. 8).

Rutherford v. U. S., 258 Fed. 855 (C. C. A. 2).

People v. Egan, 331 Ill. 489, 163 N. E. 357.

People v. Rongetti, 331 Ill. 489, 163 N. E. 357.

People v. Cunningham, 195 Ill. 550, 63 N. E. 517.

The Judge's conduct thus made the basis of this specification may be thus summarized:

1—The Judge interfered with the re-direct examination of Elmer Swanson, a Government witness, and developed by answer to his question that the witness had heard that the defendant Horton had previously taken care of, fixed and manipulated cases, and that the witness thought Horton could similarly handle the case in which he was interested. A motion was made to strike the answer which this question elicited, but it was overruled. (Rec. 241.)

2—The Judge examined Frank Hodorowicz, a co-conspirator, witness for the Government, and developed that Hodorowicz had talked to one Frank Miller, a stranger to the indictment and likewise to any legal connection with the evidence, and developed that Miller told the witness he could "take care" of his case for \$800.00, which witness paid. Witness did not know whether Miller used the money or not. That this Miller was in the bootlegging business and not a lawyer. (Rec. 307-308.) After further questioning by the Assistant District Attorney, the Judge again questioned the witness, reverting to the Miller incident, and entered into the details of that transaction, and re-emphasized it by repeated questions. (Rec. 309-310.)

3—During the cross-examination of the witness Dewes, the Judge made the witness repeat his testimony to the

effect that the defendant Kretske (petitioner) had resigned under pressure. The Judge interfered with the cross-examination of Dewes in such a manner as to deprive the defendants of the right to a free and unrestricted cross-examination. (Rec. 545.)

4—The Judge interrupted the cross-examination of appellant Kretske by developing the fact that petitioner thought the trial of alcohol cases in the Federal Court involved some difficulty, and stated positively that there is nothing difficult in the trial of any of those cases, thus indicating his disbelief in the testimony of this witness. (Rec. 816-817.)

5—The Judge interrupted the direct examination of the defendant Roth, cross-examined him himself and by the nature of his questions and his attitude clearly indicated a disbelief of the testimony of Roth. Roth stated to Campbell that an agent named Bailey was going to get a number of United States attorneys, lawyers, and judges in trouble, and that he, Roth, had heard Campbell's name mentioned. The Judge then proceeded to cross-examine the defendant vigorously as to the source of his information and by the nature of his questions indicated an utter disbelief in the statements made by Roth. (Rec. 850-851.)

At pages 869-870 of the Record, the Judge cross-examined the witness, defendant Alfred E. Roth, beyond the scope of his judicial authority in regard to a record on appeal in a farm libel case that bore a very remote, if any, relation to the issue. At page 873, where Roth was being examined as to matters unrelated to his direct examination, his counsel objected on such grounds, to which objection the Judge retorted, "This is cross-examination."

6—Federal Judge Michael L. Igoe, witness for the defense, was asked by Assistant District Attorney Ward if he knew many of the defendants who had been arrested

and prosecuted by the Government, to which Judge Igoe answered he did not know certain of them. Then the Assistant District Attorney said, "That's the point; I say you didn't know them, but Mr. Glasser does know them." A motion was made to have this statement stricken. This the judge refused to do. (Rec. 908.)

7—The Judge cross-examined the defendant Glasser in regard to a certain Nick Abeskates as follows:

"The Court: Did you know at that time that Nick Abeskates was under indictment in the Eastern and Western Districts of Wisconsin?

A. No, sir.

Q. Did you make any inquiry?

A. No, sir; you see, my job was strictly to prosecute.

Q. You were interested in getting Nick Abeskates?

A. Yes, sir." (Rec. 941.)

8—At Rec. 943, the Judge re-emphasized this matter as follows: I think my impression was that there were two indictments pending in Wisconsin against Nick Abeskates on February 25, 1938. I will ask the District Attorney's Office to check with the Alcohol Division sometime during the day, to make sure about it.

9—At Rec. 1030, the Judge said: At my request, the Government has furnished me with this. Let the record show that Nick Abeskates was indicted in the Western District of Wisconsin on January 27, 1936, and that he was indicted in the Eastern District of Wisconsin on July 30, 1938. * * * To the indictment in the Western District he pled guilty and was sentenced. * * * After that the indictment in the Eastern District was dismissed. It covers the same subject. I know that for a fact. * * * I happen to know all about Nick Abeskates.

10—The Government witness Del Rocco was under examination touching the money he is alleged to have given

the defendant Horton to fix pending cases. The Judge interrupted and asked the witness the following questions:

"The Court: Did he tell you how he would use this \$500.00?

A. That he had to give it to the boss.

Q. Did he tell you who the boss was?

A. He said 'the redhead'. That he would only get a couple of dollars out of it for his end for going out there, very little." (Rec. 243.)

11—During the examination of Government's witness Frank Hodorowicz (Rec. 297), the Judge, addressing himself to the witness said:

"Q. He said if Pete took ownership of the still, you would have the case discharged?

A. He said it cost \$800.00, so that night I came over and went to the north side someplace. He said he had to deliver the money to Red, so we went to the north side, and he went in some lobby there and I went out in the corner to the saloon. He came back. He said everything is O. K. He said everything is taken care of for tomorrow morning.

The Court: Had you paid the money before you came back?

A. Yes, sir.

The Witness: The next morning Pete and Clem Dowiat were discharged. That was the evening of September 23.

The Court: Do you know?

A. Yes, sir.

Q. Whom did he mean when he referred to Red?

A. Glasser.

Q. The defendant in the case?

A. Yes, sir.

Q. You actually paid Kretske \$800.00?

A. Yes.

Q. How did you pay it, in currency?

A. Yes, in cash."

12—During the examination of Government witness Anthony Hodorowicz (Rec. 348-349) the Judge examined

the witness in regard to what facts were brought before the United States Commissioner who was hearing the charge against the witness. He had the witness state that a full disclosure of the facts in the case was not made before Judge Woodward, before whom the case was heard. Witness was asked by the Judge whether Judge Woodward asked the witness any questions, whether any lawyer asked him any questions, and especially whether Mr. Glasser asked him any questions. The Judge then said:

“So you don’t know. Your recollection is that there was not a complete disclosure of all the facts that connected you with that case before the judge?”

Upon the witness being asked by one of counsel for the defense whether he understood the term used by the Judge, he stated that he did not, to which the Judge made answer:

“I will ask you this. Did your lawyer, or Mr. Glasser, or anyone in your presence, in the judge’s, make any statement to the judge about your conduct in relation to the still and the charge in the indictment?

A. No.”

This witness then proceeded to state on cross-examination that there were no facts connecting him with the still, and there is no fact that he could have told in regard to any connection with the still. Counsel’s final question along this line was:

“If they told the truth about you, all they could state was that you were in that neighborhood, and that they arrested you near the still, is that right?

A. Yes.

The Court: Did you hear them tell the judge that?

A. No, I didn’t.” (Rec. 348-349.)

13—After the Government agent and witness Silvan White had been fully examined, cross-examined, and re-examined, the Judge, for the apparent purpose of re-

habilitating this witness, conducted the following examination:

"Q. Did you discuss or bring to the attention of Mr. Glasser a copy of that original affidavit?

A. Mr. Glasser had a copy of the original affidavit. I had discussed Mr. Frett's affidavit as well as the affidavit of Alfred Slesur, Cecil Simms, Lester Urbanski, who corroborated Joe Cole, at least in part or some parts of his testimony concerning Kaplan.

Q. If that other statement would correspond to the statement of the other witnesses—

A. That is true.

Q. You say now the statement of Peter W. Frett corresponded in detail with the statement of this other witness?

A. It corresponds in part.

Mr. Stewart: That is what I object to. He hadn't any right to say that.

The Court: Eliminate the word 'corroborate'; and we want to know if the statements are alike.

The Witness: Not exactly, no, sir. There is more detail in Joe Cole's statement than in the others.

Q. In Joe Cole's?

A. Yes, sir.

Q. Are there some statements in the Frett affidavit that are similar to the statements in the Cole affidavit?

A. Yes, sir, exactly.

The Court: I think that is sufficient." (Rec. 805.)

14—The Judge took the direct examination away from the Assistant District Attorney of the Government witness Swanson, who had testified that he and others charged with him had appeared before Judge Woodward, were represented by Roth, and the defendant Glasser represented the Government. They were told by Roth that the case would be continued until a certain day and upon that day the witness and others appeared, the case was continued, and the witness heard no more about it. At page 232:

"The Court: Did you pay a fine or anything of that kind?

A. No, we did not pay fine.

Q. The case just dropped out of mid-air?

A. Well, it dropped out.

Q. How long ago was that?

A. Well, that was in early part of 1938."

15—At 293-294, the Judge asked Commissioner Walker, who had testified favorably to the conduct of the defendant lawyers, this question:

"Q. Of course, all you observed was their conduct in your court room?

A. Oh, yes, surely."

16—Charles Ellis was a member of the grand jury and was examined, cross-examined and re-examined touching the conduct of the defendant Glasser before the grand jury. The Judge thus interfered with the re-direct examination:

"Q. Let me ask you a question. When Mr. Glasser appeared before the jury did he submit to you a report that he had obtained from any of the agents?

A. No, he had a report with him.

Q. Did he give it to the grand jury to examine?

A. No.

Q. Did he ask this man Cole anything about any interest Mr. Cole may have had in that still?

A. No."

17—May Jerkus, a witness for the Government, was directly examined by the Assistant District Attorney. She had been in defendant Glasser's office, talking about one Girardi, who was furnishing sugar for a still. The woman's husband had been convicted of operating a still. Mrs. Jerkus visited the District Attorney's office with her husband, who was in custody, and Glasser told her in effect that if they would disclose the name of the man who owned the still, her husband would be permitted to go home. At page 615 the Judge then proceeded to cross-examine this witness:

"The Court: Can you describe the appearance of Nick Girardi at that time?"

A. He is about as tall as I am and heavy set.

The Court: Heavy set?

A. Heavy set fellow.

Q. What would you say his weight was?

A. I would say it was close to 200 pounds.

Mr. Ward: How tall are you?

A. Five feet, two.

The Court: About how old a man was he?

A. I would judge him to be about 40.

Mr. Ward: But he is the same Nick Garardi that was in the sugar business with Sol Tishman?

A. I know both of them.

Q. All right.

The Court: At the time you saw Mr. Glasser you knew him?

A. Yes, sir.

Q. You knew he was the man that furnished you with the furniture?

A. Yes, sir.

Q. Did you tell Mr. Glasser who he was?

A. I told him everything.

Q. Oh, you told Mr. Glasser?

A. Yes, sir. I told him just the whole story. How we came in from Oklahoma City and had no furniture and he gave us the furniture if he could put the still in the basement. I told him everything.

Q. You gave him the man's name?

A. Even the man's name."

18—Stanley Slesur, a witness for the Government, was directly examined by the District Attorney. He was at the time confined in the United States Penitentiary. In the course of this witness' testimony, the Judge said:

"Listen, what we want here is the truth and nothing but the truth. Do you understand?"

A. Yes, sir.

The Court: If you are testifying falsely on this stand, it may be a more serious offense than the one you are here on. We want you to tell the truth and nothing but the truth. If you went to the Tribune for some purpose say so."

The Judge then proceeded to cross-examine the witness as to whether he went to the Tribune Building. Witness said that he went to the Tribune Building to see the defendant Kretske, but only for the purpose of seeking a loan on his house. The Judge proceeded to cross-examine the witness, at page 627:

“Q. You stated now, that you called at Mr. Kretske’s office in the Tribune Building with reference to the sale of your home, is that right?

A. Yes, sir.

Q. Or to obtain a loan?

A. Yes.

Q. You had a three thousand loan at that time?

A. Four thousand.

Q. What need of money did you have at that particular time?

A. I needed it for my business.

Q. Did you attempt to raise money on your home any other place before you went to Mr. Kretske’s office?

A. Couple of real estates.

Q. What real estate office did you call on?

A. On 63d Street near Kedzie. I couldn’t recall the name.

Q. Was Mr. Kretske in the real estate business? Was he operating a real estate office at the time you consulted him?

A. I don’t know.

Q. But you went there for that purpose?

A. Yes.

Q. Did you go there to consult him as a lawyer or as a real estate salesman?

A. Well, yes, there was a couple of more fellows, a real estate man and lawyer.

Q. Did you go to see Mr. Kretske as a real estate salesman or lawyer?

A. We went to see that young fellow and somebody talked about my property at the same time, and I met Mr. Kretske.

Q. How did you happen to find yourself in Mr. Kretske’s office?

A. How did I find it?

Q. How did you happen to go to Mr. Kretske's office?

A. I was downstairs and I don't remember that fellow's name and I got upstairs to see Mr. Kretske. They told me to. I say what floor is he on, and that fellow, I don't know the name, Judge.

Q. You don't know his name?

A. Yes.

Q. And that is what you went up there for?

A. Yes, that is the truth.

The Court: All right, proceed."

19—Edward Wroblewski, an inmate of the Lewisburg Penitentiary was examined in chief by the Assistant District Attorney. He testified that the defendant Roth was his lawyer in a proceeding by the Government against him. He was asked how he came to retain Roth and said he could not tell. The Judge then proceeded to cross-examine this witness as follows (Rec. 644-646):

"A. I don't remember how I met Mr. Roth.

Q. How many lawyers have you hired in your lifetime?

A. Two.

Q. Who were they?

A. Three.

Q. Who were they?

A. Mr. Bolton, Mr. Roth and Mr. Gutsel.

Q. Did you hire Mr. Roth before you hired the other two?

A. After.

Q. After. Well, you must have some recollection of the circumstances concerning the employment of Mr. Roth. Now, tell us about it.

A. I don't quite understand your question.

Q. You know something about how you happened to hire Mr. Roth. Now tell us about it.

A. Well, I don't know. As I say, I don't remember how I got acquainted with Mr. Roth.

Q. How did you get acquainted with him?

A. I don't remember.

Q. When did you first see him? Where did you first see him? In his office?

A. Yes.

Q. How did you happen to go to his office?

A. I don't know.

Q. What is that?

A. I don't remember, your Honor.

Q. When was this?

A. After this trial in 1937, I think it was.

Q. In 1937?

A. Yes.

Q. Did somebody take you to his office?

A. I don't remember.

Q. How old are you?

A. Thirty-one.

Q. And what education have you had?

A. Two years high school.

Q. What is that?

A. Two years high school.

Q. And you don't want to tell us now how you got to Mr. Roth's office.

A. Your Honor, I don't remember.

Q. Why don't you remember? Is there any reason why you shouldn't remember?

A. No, no reason. I just don't remember.

Q. Did your brother take you up there?

A. I don't remember.

Q. How old are you now?

A. Past 31.

Q. How old is your brother?

A. Twenty-eight.

Q. You are 31?

A. Yes, your Honor.

Q. Mr. Roth represented you in Indiana?

A. Yes, sir.

Q. For the trial?

A. Yes, sir.

Q. And at that time you were convicted?

A. Yes.

Q. In a trial before the Court and jury?

A. Yes, your Honor.

Q. How much did you pay, Mr. Roth?

A. \$250.00.

Q. \$250.00. And you don't know now how you got to his office?

A. I don't know now how I ever got acquainted.

Q. Nobody recommended him to you?

A. No, sir. I don't remember whether it was a rumor about his name.

Q. What is that?

A. A rumor. I don't remember how I met Mr. Roth. (Rec. 644-646.)"

20—The witness Swanson (Rec. 230) testified that Kretske told him that the "heat was on", which the witness interpreted as meaning that it was hot over in the Federal building.

"The Court: What is that? It was hot over in the Federal Building, or something like that?

Mr. Ward (Assistant District Attorney): That is not climatically speaking; you don't mean that, do you?

The Court: What did you understand that to mean, by the heat was on?

A. Well, the heat was on them.

Q. By that what do you mean?

A. Well, that they were being watched, or something like that."

21—Clem Dowiat was a person who had been proceeded against criminally by the Government. He testified in regard to the procedure in his case before the United States Commissioner. The Judge interrupted the examination to ask the witness what he heard Mr. Glasser say at the hearing before the Commissioner. (Rec. 270.) Witness knew the defendant Roth. He had gone over to Roth's office with his uncle. He was asked why he stopped on the way at Kretske's office and said he didn't.

"Mr. Ward: Doesn't it refresh your recollection if I tell you you stopped at Mr. Kretske's office?

Mr. Stewart: Your Honor, I object to that. We are entitled to the witness' testimony.

The Court: All right, but this witness is a little reluctant. He is rather evasive at times. Objection overruled. He may answer.

The Witness: I don't get it.

Mr. Ward: Would it refresh your recollection if I were to tell you from there you went to Mr. Roth's office?

A. That might have been.

Q. Do you recall being indicted for that offense?

A. No, sir.

Q. What?

A. No, sir."

Examination by the Court (Rec. 273):

"Q. Never heard the word, did you?

A. No, sir.

Q. Never heard of anyone being indicted?

A. Oh, yes, sir.

Q. Sure you did. Don't try to evade and we'll get along faster. Now the Government has a lot of information about your conduct. You might as well answer without trying to evade."

On re-direct examination this witness was asked whether he could recall being before a judge with his uncle and Swanson. He answered yes. The judge then interfered as follows (Rec. 274):

"The Court: Do you remember what court you were in before what judge?

A. In front of Walker, Commissioner Walker.

The Court: That is the Commissioner?

Mr. Ward: Do you remember being in a court room similar to this that looked like this room?

A. No, sir.

The Court: Just mention the name of the judge.

Mr. Ward: Judge Woodward, you ask him that.

The Court: Were you in Judge Woodward's court room?

A. No, sir, Walker.

Q. Were you ever in Judge Woodward's court room?

A. Yes, sir. I was on a different case. You are getting me all mixed up. I don't know if I am coming or going.

Q. Just listen to the question. As far as you are

concerned, this is all water over the dam, so you might just as well answer the questions truthfully.

A. Yes, sir." (Rec. 274.)

22. Gordon Morgan, Chief Clerk of the United State's Attorney's Office, testified as to the result of a grand jury investigation. Of a certain grand jury in which the defendant Glasser represented the Government, he stated that there were twelve no bills returned. The Judge then questioned the witness (Rec. 196):

"Q. That is the total number of cases presented?

A. By Mr. Glasser.

Q. To this grand jury?

A. Yes, sir.

Q. And of the twenty, there were twelve no bills?

A. Yes, sir."

23. William Brantman testified (Rec. 659) for the Government that he had given the defendant Kretske some money for the purpose of influencing the conduct of the defendant Glasser in a case against a third person. Brantman and this third person flatly contradicted each other in material particulars as will afterwards be shown. As the record discloses, Grantman was at all times a willing witness, except insofar as the testimony would be highly prejudicial to him. At all times when it would injure any of the defendants without injuring himself, he was a most willing witness. Yet, we find this dialogue between the Judge and counsel for one of the defendants:

"Mr. Stewart: (Referring to the testimony of Brantman.) Your Honor, when Mr. Ward puts these convicts on, I don't object, but I know your Honor would rule that they were possibly a little reluctant, but he is not a reluctant witness.

The Court: The last two answers indicate he was a little reluctant. Objection overruled." (Rec. 659.)

24. Frank Hodorowicz testified for the Government (Rec. 541) and was by no means hostile, in fact, he showed

great energy that in his testimony he could be of the greatest service to the Government and thus benefit himself as a convicted criminal. Counsel for the defendant objected to the District Attorney's obviously leading the witness in the questions put. The Judge in answer to this objection stated that this witness was in a measure somewhat hostile, and it was proper to lead him at times. "If you can proceed without leading, do so, but if you have to lead, do so."

25. On cross-examination of the defendant Glasser by the Assistant District Attorney, the collateral matter of what schools Glasser attended was gone into by the examiner. The Judge then took up the cross-examination thus (Rec. 990-991):

"The Court: What education have you had to prepare yourself for the admission to the Bar?

A. I went to De Paul.

Q. How long did you go to De Paul University?

A. I went there, I think about a year or so.

Q. One year. Are you a graduate of high school? What high school did you graduate from?

A. I went to Lane High School.

Q. Did you graduate from high school?

A. No, I didn't graduate.

Q. How far did you go?

A. Well, I got my credits, you know.

Q. Then you went to De Paul for one year?

A. Yes, sir, then I went to Loyola.

Q. For how long?

A. About a year.

Q. And when you were at De Paul what did you study?

A. Law.

Q. And Loyola?

A. Law.

Q. And where else have you studied?

A. I have studied previously in a law office.

Q. In whose law office?

A. I can't think of his name right now.

Q. How long did you study in his office?

A. Oh, I studied in his office—

Mr. Ward: I can't hear you.

A. I studied for a couple of years in his office, I can't think of his name, it does not come to me.

The Court: What were the requirements at the time before you took the Bar examination?

A. I think three years you could have either law school, or study with a lawyer. I had the necessary qualifications.

Q. You took the Bar examination?

A. Yes, sir.

Q. Well, how long did you study in the law office?

A. Oh, I think I studied about two years, I don't remember.

Q. In whose law office did you study?

A. I can't think of the lawyer's name—it will come to me in a little bit. I have it at the tip of my tongue.

Q. Where was the office?

A. I think 69 West Washington Street.

Q. Miss McGarry was your secretary?

A. Yes, sir.

Q. And she made up this personnel record of Daniel D. Glasser?

A. Yes, sir. I didn't look at it at the time at all. I can tell you if there are any other mistakes, I doubt it. It says LL.D. there—

Q. What do you suppose LL.D. means, what is that?

A. There isn't any LL.D., I think there is a J. D. or LL.D.

The Court: It appears from this record he attended Loyola University from 1922 to 1925. Was that true?

A. No, sir.

Q. Did you give that information?

A. No, I didn't give it to her. I don't remember how that came out. Mr. Campbell knew I went to De Paul.

Q. It don't make any difference, you signed this?

A. Yes, sir, I gave it to Mr. Campbell. He knew the truth about it.

Q. I mean you read it before you signed it.

A. I didn't. It was not true. It was not under oath or anything.

Q. It don't make any difference whether under oath. You read it before you signed it, didn't you?

A. I don't remember. I really don't. And Mr. Campbell knew the truth." (Rec. 990-991.)

26. The Judge (Rec. 1000-1002), thus cross-examined the defendant Glasser:

Q. Don't you think the Judge wants to know the entire background?

A. No, sir, it is not fair.

Q. Not fair to who?

A. It is not fair to anybody, to the claimant.

Q. I think the court ought to know.

A. Here are the facts—

Q. Don't you think the Judge ought to know about anybody that appears before him?

A. Yes, sir. Leo Vitale was not before Judge Barnes. You see, it is a knocked-down statement.

Q. There was one Chrysler Sedan automobile before Judge Barnes?

A. I was representing the Government in that case. I know now that Mr. Roth had filed an appearance for Rose Vitale. I didn't remember that.

Q. Do you want to tell this Court and Jury you just knew Rose Vitale was represented by Roth before Judge Wilkerson, you heard it in this court room?

A. No, I want to say when I got the Bill of Particulars, I just had it back. That is the first time I ever remember this case, when I got the Bill of Particulars. I don't remember if Victor Dowd, the Agent for the Alcohol Tax Unit, was there in Court that day before Judge Barnes. I assume he was. He said he was.

Q. And Victor Dowd, after he heard you make the statement to the Court of the libel, said to you, 'Let me take the stand, and I will save that car for the Government of the United States.' And you said, 'Get the hell out of here.' Did you not?

A. I might have said it, I don't remember. It is possible, I might have. I might have made that

answer telling him to get the Hell out of the court room. We couldn't have saved the car for the Government. I was prosecuting according to law. A libel is an attempt by the Government to condemn a car which has been seized and forfeited to the Government. They do that because that is the way they can get clear title to the car for the car—if the car is worth more than \$500.00—

Q. Mr. Glasser, will you tell this Court and jury—

A. You don't want me to answer?

Q. All right, go ahead, and answer.

A. The libel law is to the effect after a car is seized, if the car is worth more, if it is seized by the Agents for the Alcohol Tax Unit, it is worth more than \$500.00, the Alcohol Tax Unit has it appraised, they have it appraised by its Appraisal Department, and if it is worth more than \$500.00 they will send it over to the District Attorney's office, so they may file a libel, if the car is worth less than \$500.00—

Q. Aren't you talking about the matter of seizure rather than what a libel is?

A. That is the only way I can tell what a libel is. I don't remember how many cases I handled when I was in the United States Attorney's Office, quite a number.

Q. Isn't it a fact, Mr. Glasser, if an automobile is found on the premises where there is also found an unregistered still, that if it is found within the enclosure, and you have got evidence which can establish that the particular automobile found within the enclosure of the unregistered still, was on numerous occasions followed by the Alcohol Tax Unit, and observed and seen cans of alcohol being placed on it, and license number changed on it, and traced to the premises where the still is actually found, do you consider that fairly good evidence that the automobile was being used to defraud the United States Government out of the taxes on alcohol?

A. Yes, sir.

Q. That is what was done in the Vitale case?

A. No, sir, you are showing me a criminal file, and not the civil file, that is not fair. The criminal

file is not used in connection with the civil file. I never did. It shouldn't be. They have a special investigation, and special department that works on it, Judge." (Rec. 1000-1002.)

Point VII

The judge imposed such limitations on the right of the appellant and appellants as (a) to fatally prejudice them in their defense, and (b) to constitute a denial of due process of law. (Petition, p. 6.)

A fair and full cross-examination of a witness upon the subject of his examination in chief is the absolute right of the party against whom he is called, and the denial of this right is a prejudicial and fatal error. It is only after the right has been substantially and thoroughly exercised that the allowance of cross-examination becomes discretionary with the court.

Alford v. U. S., 282 U. S. 687, 75 L. Ed. 624.

District of Columbia v. Clawans, 300 U. S. 617, 81 L. Ed. 843.

Moyer v. U. S., 78 Fed. (2d) 624 (C. C. A. 9).

Asgill v. U. S., 60 Fed. (2d) 776 (C. C. A. 4).

Minner v. U. S., 57 Fed. (2d) 506, 511, 512 (C. C. A. 10).

Heard v. U. S., 255 Fed. 829 (C. C. A. 8).

Harrold v. Oklahoma, 169 Fed. 47 (C. C. A. 8).

Collenger v. U. S., 50 Fed. (2d) 345, 350, 351.

Gilmer v. Higley, 110 U. S. 47, 28 L. Ed. 62.

In *Harrold v. Oklahoma*, 169 Fed. 47, 51, the Court said:

"Statements in the opinions of courts are called to our attention to the effect that the limit of cross-examination is discretionary with the trial court, but it is only discretionary without the limits of the right of the party against whom a witness is called to a full

and fair cross-examination of him upon the subjects of his direct examination, and the right of the party in whose behalf he testifies to restrict his cross-examination to the subjects of his direct examination. This question has repeatedly received the studious and thoughtful consideration of this court (citing cases) and it adheres to the conclusion that the true rules and the reasons for them are stated in *Resurrection Gold Mining Co. v. Fortune Gold Mining Co.*, 129 Fed. 668, 674, 64 C. C. A. 180, 186, in substantially these words: A fair and full cross-examination of a witness upon the subjects of his examination in chief is the absolute right, and not the mere privilege, of the party against whom he is called, and a denial of this right is a prejudicial and fatal error. It is only after this right has been substantially and fairly exercised that the allowance of cross-examination becomes discretionary with the trial court. *Gilmer v. Higley*, 110 U. S. 47, 50, 3 Sup. Ct. 471, 28 L. Ed. 62."

In *Gilmer v. Higley*, 110 U. S. 47, 50, cited in the foregoing case, the United States Supreme Court said:

"To permit a party to the suit to tell his own tale of a transaction like this and conceal what is important to the defendant in regard to the same occurrence at the same time would be a gross perversion of justice, and would bring into discredit the policy of permitting parties to actions to testify in their own behalf."

In *Collenger v. U. S.*, 50 Fed. (2d) 345, the Circuit Court of Appeals of this Circuit, in citing and applying the case of *Alford v. U. S.*, 282 U. S. 687, said:

"The Supreme Court (in the *Alford* case) evidently deeming the situation to afford 'special and important reasons' for its intervention, awarded certiorari, and, brushing aside technicalities, reversed the judgment upon the ground alone that the defendant had been unduly restricted in his lawful right of cross-examination."

Point VIII.

It was reversible error to cross-examine the witnesses for the petitioners, which far beyond the subject matter and time embraced by their direct examination, the effect and purpose of such cross-examination being the showing of matters against the petitioners, which, if provable at all, should have been proved by the Government as part of its case in chief. This cross-examination had also for its purpose and effect the impeachment of these witnesses by showing them guilty of offenses not involving moral turpitude, which could not be shown directly as impeaching circumstances. Also, its purpose and effect was to make these witnesses, beyond the scope of cross-examination, testify to facts in favor of the Government, without making them direct witnesses for it. (Reason 8, p. 7, Petition.)

Tucker v. U. S., 5 Fed. (2d) 88, 822, 823, 824 (C. C. A. 8).

Wilson v. U. S., 4 Fed. (2d) 888 (C. C. A. 8).

Terzo v. U. S., 9 Fed. (2d) 357 (C. C. A. 8).

Havener v. U. S., 15 Fed. (2d) 503 (C. C. A. 8).

Gideon v. U. S., 52 Fed. (2d) 427 (C. C. A. 8).

Haussener v. U. S., 4 Fed. (2d) 884, 887 (C. C. A. 8).

Laurence v. U. S., 18 Fed. (2d) 407 (C. C. A. 8).

Middleton v. U. S., 49 Fed. (2d) 538 (C. C. A. 8).

Harrold v. Oklahoma, 169 Fed. 47, 52, 53 (C. C. A. 8).

People v. Newman, 261 Ill. 11, 103 N. E. 489.

People v. Geidras, 338 Ill. 340.

State v. Cannon, 66 Mo. 116.

People v. Adams, 76 Cal. App. 178, 244 Pac. 106.

People v. Fleming, 166 Cal. 359, 381, 136 Pac. 291, 302.

Hernsley v. Commonwealth (Ky. Ct. of App.),
31 Ky. Law. Rep. 386.

State v. Borri, 199 S. W. 136, 138 (Mo.).

People v. Quinn, 295 Pac. 1043.

See Point VI, and the argument made and record set out in support thereof, which shows a similar cross-examination conducted, not by the Assistant District Attorney, but by the Judge.

Point IX.

The prosecutor committed reversible error through the following conduct: (a) by leading questions persistently put in the mouths of accomplice witnesses, that were vital to the prosecution and fatal to the defense, and in that manner substituted the testimony of the prosecutor for that of an accomplice witness; (b) upon cross-examination by repeatedly putting to a petitioner, while on the witness stand, absolutely unnecessarily the same question for the purpose of emphasis, in regard to most material matter. After the prosecutor went into a matter upon examination in chief, the judge refused, upon the objections of the prosecutor, to permit the petitioners to inquire into the matter. After Government witnesses had been turned over to the defendants for cross-examination and were cross-examined, the prosecutor on pretended re-examination, went far beyond matters developed in cross-examination. He was permitted to introduce evidence out of the usual order continuously without showing good and exceptional cause for doing so. Upon request to do so on the part of petitioner Glasser, the prosecutor refused him the right to examine a document relied upon by the Government, in the sole possession of the prosecutor. (Petition, p. 7.)

A. It is as much the duty of a prosecuting attorney to refrain from improper methods to bring about a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. U. S., 295 U. S. 78, 79 L. Ed. 1314.

Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6).

B. It was reversible error for the prosecutor, upon cross-examination, to repeatedly put to petitioners while on the stand the same question in regard to material matter.

People v. Barberi, 149 N. Y. 256, 275, 276.

C. Where the prosecutor goes partially into a material matter on examination in chief, it is reversible error to refuse the right to go into this same matter on cross-examination.

Harrold v. Oklahoma, 169 Fed. 47 (C. C. A. 8).

State v. Nugent, 116 La. Rep. 99.

D. In criminal prosecutions, where a witness for the prosecution has been turned over to the defendant for cross-examination, the re-examination of the prosecutor must be confined exclusively to the cross-examination; and to materially disregard this rule is reversible error.

State v. Denis, 19 La. Ann. 119.

State v. Wright, 4 La. Ann. 589, 590, 591.

E. While a trial court has a reasonable discretion in the matter of allowing either party to introduce additional testimony in chief after the close of the case, the court should not allow the introduction of testimony out of the usual order, except for good and exceptional cause, and to do so is reversible error.

Williams v. Commonwealth, 90 Ky. Rep. 596.

Dalton v. Commonwealth, 226 Ky. Rep. 127, 130, 131.

Collins v. Commonwealth, 15 Ky. Law Rep. 691, 693.

Fletcher v. Commonwealth, 26 Ky. Law Rep. 1157.

People v. Harper, 145 Mich. 402, 108 N. E. 689.

Pharr v. U. S., 48 Fed. (2d) 767 (C. C. A. 6).

And,

F. To refuse a defendant the right to examine a material Government document which is relied upon as evidence against him is reversible error. (Reason 9, Petition, p. 7.)

The prejudicial acts of the Assistant District Attorney made the basis of the foregoing reason are these:

1. Government witness Workman testified (Rec. 209) that he was on probation. He was then asked by the District Attorney whether from the time he was placed on probation to the 31st day of March, 1939, the defendant Glasser ever called him into the office to talk about the case. The Judge asked the Assistant District Attorney what occasion Mr. Glasser would have to call him into the office after that, to which the District Attorney rejoined, "It is merely a circumstance to show interest."

"The Court: Never mind. Objection overruled. He may answer.

The Witness: No, sir."

This question was also put on re-direct examination, and was not responsive to any matters touched upon by cross-examination.

2. The Assistant District Attorney put the testimony he desired in the mouth of Elmer Swanson, the Government witness while testifying on direct examination, in the following manner (Rec. 229):

"A. Well, the case was supposed to be taken care of for \$800.00, and nobody was supposed to go to jail.

Q. Was there something said about \$1,200.00 at this time?

A. Well, the \$800.00 was supposed to be the first payment, and when everything was all over, why the rest of it was supposed to be paid.

Q. Was there \$500.00 in currency paid to Kretske at that time?

A. I think it was \$500.00, if I'm not mistaken.

Q. And the balance was to be \$700.00, is that it?

Mr. Stewart: Well, your honor, we would like to have the witness' testimony and not Mr. Ward's. We object.

The Court: If the witness knows, speak out and tell us what the facts are.

The Witness: A. Well, I think it was \$500.00, and there was a \$700.00 balance, it was \$1,200.00 in all."

3. The Assistant District Attorney re-cross examined and the Judge permitted him to re-cross examine the defendant Roth in regard to a subject matter which had been thoroughly covered in previous examinations. An objection was interposed on that ground and overruled. (Rec. 882-884.) The Assistant District Attorney then proceeded to an extended examination on these foreclosed matters, which was prejudicial to the defendants. (Rec. 882-884.)

4. The Assistant District Attorney conducted an unfair and insidious cross-examination of Judge Michael Igoe, a witness for the defense, seeking by innuendo to prove that the Judge was acquainted with the criminals who were involved as violators of the liquor laws of the United States, and who were concerned in the alleged conspiracy, as follows (Rec. 907-908):

"Q. Now, Judge, do you know a man named Clem Swanson, I mean Elmer Swanson?

A. Not by name.

Q. Do you know a man named Clem Dowiat?

A. Not by name.

Q. Do you know a man named Kamarek?

A. No.

Q. Do you know a man named H. L. Welch?

A. Those are evidently the names of those defendants, from this report; I don't know any of them, if that is what you are trying to find out.

Q. Why do you say that?

A. Because the names are here. Here is Charles Swanson, Clem Dowiat. How did you think I might know them?

Q. Is H. L. Welch one of those?

A. I don't think—

Q. I know you read that report.

A. What makes you think I might know them?

Q. I only asked you—

A. Well, you did ask me, I ask you what makes you think I might know them?

Q. You say you don't know them.

A. I am telling you I don't know him.

Q. That is the point. You say you don't know them, but Mr. Glasser does know them?

A. I don't know anything about them.

Q. But you don't know?

A. You know I don't know them. You don't have to insinuate I do, either. (Rec. 907-908.)"

5. The Assistant District Attorney refused to permit the defendant Glasser to examine the file and reports in his possession for the purpose of refreshing his recollection on cross-examination, notwithstanding the order of the court to that effect.

6. The Assistant District Attorney placed Thomas Bailey, a witness for the Government, on the stand for alleged rebuttal and interrogated him in regard to his connection with the Treasury Department, which was received under objection. He was asked regarding his services with the Treasury Department after 1926. He testified that he had been stationed at Philadelphia, Wilmington, Delaware, Baltimore, and in the Western District of Virginia. That a John Paul was District Judge and Joseph Chitwood, District Attorney of that District. That he had two assistants, Frank Tavner and

Art Gilmer. The name of the District Clerk was Clarence Gentry. That he had investigated cases which resulted in trials before Judge Paul. That he had been awarded during the World War the American Distinguished Service Cross, the French Croix du Guerre, with a gilt star, and the purple heart of an oakleaf cluster. That he had been a lieutenant and battalion commander in the World War. That these decorations were received for valor, and that the purple heart was received because of the witness receiving two wounds in action. That he had never been run out of the south or ordered out of a courtroom by a Judge. All this was received subject to objection and exception. (Rec. 1039-1040.)

7. The Assistant District Attorney put answers into the mouth of witness Swanson in the following manner (Rec. 230):

"Q. Now have you exhausted your recollection of the entire conversation?

The Court: In other words, have you told us all you can remember he did?

A. Well, I don't think I can remember anything else.

Mr. Ward: Would it refresh your recollection if I was to tell you that Kretske said, 'Don't worry about a thing. Everything will be taken care of.'

A. Yes, that was said.

Q. And Dan was to get part of the money that was given him?

A. Well, I don't know if he said Dan or Red or something like that, either one.

Q. Either what?

A. Either one, Red or Dan.

Q. Didn't you know at that time who Kretske was referring to as Red?

A. Yes.

Q. Who?

A. Well, it was Glasser."

He further asked the same witness (Rec. 231):

"Q. While you were there before Judge Woodward, did Mr. Glasser say to you in the presence of

Anthony Hodorowicz, Clem Dowiat or Claude Swanson, you are in this indictment with violating certain sections of the Internal Revenue laws, that is on a certain day you had in your possession a certain still unregistered, and that you had in your possession mash and alcohol mash to be used in the manufacture of alcohol upon which the tax was not paid. Language to that effect. Was that ever asked you in the presence of Judge Woodward?

Mr. Stewart: Your Honor. Mr. Ward spent a long time telling this jury what his evidence is. Now if he just asks the witnesses. That is my objection—to his doing the testifying.

Mr. Ward: No, this is in effect, asking the witness about the arraignment. I am asking if that was said in his presence, and whether he was arraigned there. He wouldn't know. (Rec. 231.)"

8. While Government witness Del Rocco was testifying in regard to alleged transactions between offenders against the law and defendants Horton and Kretske, the Assistant District Attorney said to the witness:

"Was there anything said there about their not being brought to trial?" (Rec 244.)

9. These words were put in the mouth of the witness by the Assistant District Attorney in the examination of William Wroblewski (Rec. 636):

"Q. Well, now, would it refresh your recollection if I was to call your attention to a statement that you made to Mr. Devereux and Mr. Bailey on August 3, 1939, in which you said, 'On one occasion while I was in Roth's office, he, Kretske, said to me if I had any cases fixed, don't talk about them or you will get into some trouble.' Do you remember that?

A. I don't believe it was Mr. Kretske.

Q. Who told you that?

A. Well, the way that come out. I went down to see Mr. Al Roth, and I told him I was having trouble with the law. I said that the law is looking for some information from me, and Mr. Al Roth told me if I gave information to anybody I would be implicated in the case.

Q. Was it he used the word 'implicated'?

A. That is right.

Q. So that was an occasion when you were in Roth's office that Mr. Roth said that to you?

A. Yes, sir.

Q. Now, are you sure he didn't say: 'If I had any cases fixed, don't talk about 'hem or you will get into more trouble'? That he didn't use that language?

A. Well, I might have expressed myself that way at the time, but I recall now that the right word is implicated.

Q. Implicated?

A. Yes, sir."

10. These leading questions were put to the Government witness Brantman by the Assistant District Attorney (Rec. 660-661):

"Q. Didn't Mr. Kretske tell you to get the five thousand dollars?

A. I don't know, he might have said the work was worth that.

Q. Do you recall a long conversation in the District Attorney's office?

A. I might recall some of it. They asked many questions.

Q. Do you recall Mr. Devereux asking: 'Q. Didn't Mr. Kretske tell you to get five thousand dollars from Nick? A. Yes, sir.' Do you recall that?

Mr. Stewart: May I object? He has no right to bring before this jury what was said in the District Attorney's office.

The Court: Objection overruled.

Q. Do you remember that question?

A. I don't remember that question. I am trying to recall the conversation."

11. On examination Government witness Del Rocco, the Assistant District Attorney thus demeaned himself. (Rec. 245.)

"Q. When Mr. Kretske told you that the heat was on, did you say the heat was on the redhead, and, he guessed it was hard for it to be carried out?

Mr. Stewart: I object, your honor, that is unfair.

The Court: It is leading. Objection sustained.

Mr. Ward: Q. Do you recall anything else that was said?

A. The heat was on the redhead.

Q. Are you sure he said that?

The Witness: At that time you didn't know Mr. Glasser.

Q. Do you know whom he meant?

A. (Answer inaudible.)"

12. Government's witness Edwin Walker, who had testified as to his method of procedure in the cases brought before him, was asked by the Assistant District Attorney (Rec. 289):

"It does not mean that there may not be probable cause, but that it was not shown to you."

13. On direct examination of Government witness Workman the Assistant District Attorney put the testimony in the witness' mouth in the following way (Rec. 206):

"Mr. Ward: Q. Now, did you discuss with any person, your case? I don't want you to say what was said, but did you discuss with any person anything about your case before you went to Ed Hess' office?

A. No, I don't recollect that I did.

Q. Did Ramsey talk to you about it?

Mr. Stewart: I object. He said he did not recollect that he did. The prosecutor has no right to cross-examine his own witness.

Mr. Ward: Q. Would it refresh your recollection if I were to say to you that you had a conversation with me in my office in which you told me that Ramsey was Schiabone and that you talked to Ramsey before you went to Ed Hess' office? Would that refresh your recollection?

Mr. Stewart: May I have a ruling, your Honor? That is proper.

The Court: Overruled.

Mr. Stewart: Exception."

14. The Assistant District Attorney on re-direct examination permitted by the Court went into subject matter of the direct examination which had not been opened up by Cross-examination and had the Government Witness, Victor Rabunas, testify that he was inside of the delicatessen store on the first occasion and saw Louis Kaplan coming. That Kretske came to the corner of the store in a green car, and opposite him sat the defendant Glasser. (Rec. 520-523.)

Point X.

It was reversible error for the court (a) to admit a prejudicial act disconnected with the conspiracy charged; (b) to admit in evidence against petitioners a highly prejudicial statement, act or declaration made by another alleged conspirator; and (c) to exclude important evidence operating in behalf of the defendants. (Petition, p. 8.)

A. Where evidence of acts disconnected with a conspiracy is admitted, the same is reversible error available to any defendant prejudiced thereby.

Prettyman v. U. S., 180 Fed. 30 (C. C. A. 8).

U. S. v. McNamara, 91 Fed. (2d) 986 (C. C. A. 2).

U. S. v. Sprengel, 103 Fed. (2d) 876 (C. C. A. 9).

Cooper v. U. S., 9 Fed. (2d) 216 (C. C. A. 8).

Minner v. U. S., 57 Fed. (2d) 506 (C. C. A. 10).

B. It is reversible error to admit in evidence against alleged co-conspirators a statement, act or declaration after the termination of the alleged conspiracy.

Logan v. U. S., 144 U. S. 263, 36 L. Ed. 429.

Brown v. U. S., 150 U. S. 931, 37 L. Ed. 1010.

Collenger v. U. S., 50 Fed. (2d) 345 (C. C. A. 7).

C. Where in a conspiracy charge important evidence operating in behalf of defendants is excluded from the jury, such constitutes reversible error.

Olson v. U. S., 133 Fed. 849 (C. C. A. 8).

Cooper v. U. S., 9 Fed. (2d) 216.

Hills v. U. S., 97 Fed. (2d) 710, 719 (C. C. A. 9).

This reason deals with the admission of evidence of a very grave character in relation to matters not set out in the bill of particulars, by which the indictment was limited. It is clear that it operated as a definite surprise to the defendants, who were led to believe from the bill of particulars that no evidence would be admitted except that in relation to the particulars set forth in the bill of particulars. In addition thereto, under the circumstances, all the evidence thus admitted was irrelevant, not connected with the issues, and highly prejudicial. (Rec. 678-689.)

The substance of this error is that the Court erred in admitting the testimony of Alexander Campbell for the reasons included in the written motion. The testimony appears at Rec. 678-679. The motion to exclude the testimony speaks for itself and is as follows:

"1. That said proposed testimony is not a declaration made in pursuance of the object of the alleged conspiracy.

2. That the said proposed testimony is not part of the execution of the alleged plan of the alleged conspiracy.

3. The fact that the declarant is indicted adds nothing to the competence of his alleged declaration.

4. The fact that one alleged conspirator tells another something allegedly relevant to the alleged conspiracy does not make the alleged declaration competent.

5. That mere conversation of an alleged conspirator with another does not implicate him or

others in a conspiracy with others not independently shown to be a party to the alleged conspiracy.

6. That no independent proof of the alleged conspiracy has been offered.

7. That the proposed testimony is concerning a transaction not related to the alleged conspiracy.

8. That the bill of particulars, setting forth the causes, persons, and places involved, so that the defendants might be prepared to meet the particulars alleged, does not set forth the case of *United States v. Edward Wroblewski and William Wroblewski* in the Northern District of Indiana.

9. That the proposed testimony is prejudicial and will not tend to prove any issue in the above cause."

This was overruled and the prejudicial testimony admitted.

The Court overruled the motions of all the defendants to strike and exclude the testimony of Government witness Victor J. Dowd, which appears at Rec. 218-221. This testimony referred to matters not set forth in the bill of particulars, and is of a most prejudicial nature and the refusal to strike this testimony undoubtedly prejudiced the defendants.

The Court erroneously struck out parts of the testimony of the defendant Glasser, which testimony was essentially proper, in view of remarks made by the Judge. This matter is to be found at Rec. 1022-1023, and is as follows:

"The Court: Q. Just a minute, on that point. Was it your solemn judgment that the cause of good government would be best promoted by turning these twelve defendants loose who had been convicted and in exchange have their testimony to convict Abesketes?

A. Yes, sir, it was the judgment of myself, Judge Igoe and Mr. Herrick.

Q. To turn twelve defendants loose on the streets who had been convicted of operating or involved in the operation of some still with Abesketes, in ex-

change for their testimony which might convict Abesketes, when Abesketes was at that time under indictment in the Eastern District of Wisconsin; is that your solemn judgment?

A. It is my solemn judgment, yes, resulting from conference with Mr. Herrick and Judge Igce. Mr. Herrick went to Washington for the same purpose I did, as I am being blamed with it, but he went down there with me.

Mr. Ward: I move these remarks be stricken out, so that they cannot be in this record to be argued later.

The Court: It may be stricken. I ask him for his own judgment."

CONCLUSION.

We respectfully submit that the decision of the Circuit Court of Appeals for the Seventh Circuit should be in all matters reversed.

EDWARD M. KEATING,

Counsel for Appellant.

JOSEPH R. ROACH,

Of Counsel.

APPENDIX.

Sec. 25, Chap. 78, Ill. Anno. Stat., is as follows:

“Board to prepare jury list—The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors between the ages of 21 and 60 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list. The list may be revised and amended annually in the discretion of the commissioners. The name of each person on said list shall be entered in a book or books to be kept for that purpose, and opposite said name shall be entered the age of said person, his occupation, if any, his place of residence, giving street and number, if any, whether or not he is a householder, residing with his family, and whether or not he is a freeholder. (1887, June 15, Laws 1887, p. 214, Sec. 2; 1897, June 9, Laws 1897, p. 243, Sec. 1.)”

Sec. 1, 1939 Ill. Rev. Stat., p. 1929, is as follows:

“Section 1. Section 1 of ‘An Act concerning jurors, and to repeal certain acts therein named,’ approved February 11, 1874, as amended, is amended to read as follows:

§1. The county board of each county shall at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct in the county, giving the place of residence of each name on the list, to be known as a jury list. Approved May 12, 1939.”

Sec. 2, 1939 Ill. Rev. Stat., p. 1933, is as follows:

“Section 2 of ‘An Act in relation to jury commissioners and authorizing judges of courts of record to

appoint such jury commissioners and to make rules concerning their powers and duties,' approved June 15, 1887, as amended, is amended to read as follows:

§ 2. The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list. The list may be revised and amended annually in the discretion of the commissioners. The name of each person on said list shall be entered in a book or books to be kept for that purpose, and opposite said name shall be entered the age of said person, his occupation, if any, his place of residence, giving street and number, if any, whether or not he is a householder, residing with his family, and whether or not he is a freeholder. Approved May 12, 1939."

Section 88, Title 18, U. S. C. A., is as follows:

"(Criminal Code, section 37.) Conspiring to commit offense against United States.—If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R. S. 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, § 37, 35 Stat. 1096.)"

Section 91, Title 18, U. S. C. A., is as follows:

"(Criminal Code, section 39.) Bribery of United States Officer.—Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official

function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made or tendered, and imprisoned not more than three years. (R. S. § 5451; Mar. 4, 1909, c. 321, § 39, 35 Stat. 1096.)”

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IN THE
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No. 31

NORTON I. KRETSKE,

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vs.

UNITED STATES OF AMERICA.

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY TO BRIEF FOR THE UNITED STATES

EDWARD M. KEATING,
10 South La Salle Street,
Chicago, Illinois,
Counsel for Petitioner.

JOSEPH R. ROACH,
Of Counsel.

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**Petitioner Kretske's answer to the Government as to the
sufficiency of the evidence against him.**

The Government's interpretation of the effect of the evidence against Kretske is as follows: "Petitioner Kretske concedes (Pet. 3, Br. 3-4, 8-11) the existence of sufficient evidence against him." (Gov. Br. 11.) This is an unfair statement upon the position of Kretske in his brief p. 3, which is as follows: "Suffice it to say, that the

testimony of the Government was mainly that of accomplices, whether indicted, or unindicted, and it was characterized by inconsistency, contradictoriness, and such lack of convincingness, as would ordinarily render it impotent to convince a jury. It was further uncorroborated by any but accomplice witnesses, who in their attempted corroboration, generally contradicted each other. This type of testimony would be insufficient to support a verdict in the Eighth Circuit, as shown by the cases of *Sykes v. United States*, 204 Fed. 909, and *Dahly v. United States*, 50 F. (2d) 37.

It is clear from the above that Kretske does not concede the sufficiency of the evidence against him.

Kretske's Point X untouched in the brief of the Government.

May we respectfully direct the attention of the Court to the fact that in the Brief of the Government embracing one hundred and fifty-three pages, this point is passed unnoticed. The Petitioner considered this point as tendering an issue involving a most serious and prejudicial error. This point is based on assignment number 10 in reasons relied upon for allowance of the writ (Pet. 8) and specification of errors J. (Br. 11, 82.)

The point is stated as follows (Subdivision A, Br. 82):

“Where evidence of acts disconnected with a conspiracy is admitted, the same is reversible error available to any defendant prejudiced thereby”,

and five cases, including *Prettyman v. U. S.*, 180 Fed. 30 (C. C. A. 6), *U. S. v. Sprengel*, 103 Fed. (2d) 876 (C. C. A. 3), and *Minner v. U. S.*, 57 Fed. (2d) 506 (C. C. A. 10), were cited in support of it. In this regard we assert that the admission of the evidence embraced by this point was reversible error as to all defendants.

This point is based upon the testimony of the Government witness Alexander Campbell (R. 680-689). This witness, over very specific and exhaustive objections to his testimony (R. 678-680, 717), testified, in part, that he was an Assistant United States Attorney for the Northern District of Indiana. An indictment had been returned on April 25, 1938, in that District charging Edward Wroblewski and William Wroblewski, with a conspiracy to violate the revenue laws of the United States. On September 30, 1938, petitioner Roth called at the office of witness in the Federal Building in Fort Wayne, Indiana, and stated that he desired to talk about two clients of his, the Wroblewski brothers of Chicago, who had been indicted in that District. Roth then left, but shortly thereafter had another conversation in front of the Federal Building in which Roth allegedly said to Campbell, "Well, Mr. Campbell, if you find, when you check the records that the Wroblewskis are not indicted, and that their case has not been presented to the Federal Grand Jury, isn't there some way that some arrangement can be made that they will not be indicted? Isn't there some way we can handle this so that it does not have to be presented to the jury?" To which Campbell allegedly answered: "No, these Wroblewski brothers, if they are not indicted, their case will be presented in due course to the Federal Grand Jury, and if there is sufficient evidence the Grand Jury will probably indict them, and if they are indicted, they will be prosecuted." Roth allegedly further stated: "Well, isn't there some arrangement we can make? Isn't there some way we can handle this? I know all about Grand Juries. I know how they work, and isn't there some way some arrangement can be made to handle this case?" To this Campbell allegedly said: "No, Mr. Roth, that cannot be done, be-

cause the United States Attorney has a policy of presenting all cases to the Federal Grand Jury; that case will be presented in the regular channel as every other case is." Roth allegedly then said: "Well, suppose I raise my fee \$500 or \$1,000, and give it to you to handle this case." To this Campbell allegedly said: "No, that is not being done in the Northern District of Indiana, that is not the way we operate." Roth then allegedly said: "Well, if you don't want to take the money yourself to handle this case, in that way, this is a campaign year, and I assume you have campaign assessments to pay, the fall campaign coming on, and if you don't want to take this money yourself, use it for your campaign assessment." To this Campbell allegedly said, "No, Mr. Roth, that is not the way we operate in the Northern District of Indiana." Roth allegedly answered, "Well, that is the way we handle cases in Chicago sometimes." To this Campbell allegedly rejoined: "I don't care how you do it in Chicago, that is not the way we do it in Indiana."

It is clear that this testimony tended to show, if believed, a separate and distinct criminal act, executed independently of a conspiracy to defraud the United States of the conscientious service of Glasser in the Northern District of Illinois. Its prejudicial character is clearly apparent and it must be considered as having a vitally prejudicial bearing upon the verdict of the jury. Also it is apparent that the jury believed this testimony. As apparent is it that the Wroblewski case concerning which this asserted attempt to corrupt and bribe was made, was a separate offense occurring in the Northern District of Indiana. It was clearly isolated from the conspiracy charged in the indictment, as clearly disclosed by the

record. Under even the liberal rules of admissibility in conspiracy cases, this should have been rigorously excluded.

In *Prettyman v. U. S.*, 180 Fed. 30, 36, *supra*, it was held that where separate offenses were admissible as tending to prove a charge of conspiracy, these offenses must have been participated in by all the defendants charged in the indictment with the conspiracy.

Certainly these particular alleged acts of Roth are not the acts of Glasser and Kretske, against whom they were admitted; hence, their admission cannot be supported upon the basis of the rule permitting the showing of other offenses in appropriate cases.

In *U. S. v. Sprengel*, 103 Fed. (2d) 876 (C. C. A. 3), *supra*, the court reversed a conviction in a case where the guilt of the defendants was amply demonstrated, because there was so much error in the record and so many instances of prejudicial matter having been placed before the jury that the accused had not been tried in accordance with the substance and forms of law. Two of the errors assigned were almost identical with the one we are discussing. The first error was that a competing group of conspirators had attempted to bribe a Registrar of Wills. The second was the admission of a number of bulletins gotten out by a person but vaguely connected with the conspiracy charged. As to this the court at pp. 881, 882 said:

"There was no testimony to show that the appellants were in any wise responsible for the sending of these bulletins in evidence through the mails or aided in their preparation or publication. These were the work of Baker alone, unaided by the appellants or their co-conspirators. The effect of these bulletins upon the minds of the jury must have been far

reaching in indicating the existence of fraud because the statements are plainly fraudulent."

What must have been the effect upon the jury in the instant case when there was introduced before it, evidence of an alleged attempt to bribe an Assistant United States Attorney in regard to the prosecution of a violation of the United States liquor laws?

The same ruling under practically the same circumstances was had in *Minner v. U. S.*, 57 Fed. (2d) 506, *supra*, where the court at p. 512 said:

"Counsel for Minner assert that the court erred in admitting the testimony of Armstrong as to the transaction between him and Norton in behalf of Nelson. The evidence shows that this was a separate and distinct conspiracy. It did not show that it was connected with or related to, or in furtherance of the conspiracy charged. *It was not admissible in this case for any purpose.*" (Italics supplied.)

All of these cases are cited at page 82 of Petitioner Kretske's Brief (Point X, Subdivision A).

To these cases may be added many other decisions covering the same point and in each case reversing a judgment in cases where separate offenses were introduced in evidence. *Boyd v. U. S.*, 142 U. S. 450, 458, 35 L. Ed. 1077; *U. S. v. Dressler*, 112 F. (2d) 972; *Nigro v. U. S.*, 117 F. (2d) 624, 632 (C. C. A. 8); *Walker v. U. S.*, 104 F. (2d) 465; *Laughlin v. U. S.*, 92 F. (2d) 506 (C. C. A. D. C.); *Melaragno v. U. S.*, 88 F. (2d) 264 (C. C. A. 3); *Simpkins v. U. S.*, 78 F. (2d) 594; *McLafferty v. U. S.*, 77 F. (2d) 715 (C. C. A. 9); *Frantz v. U. S.*, 62 F. (2d) 737; *Conkston v. U. S.*, 51 F. (2d) 178 (C. C. A. 9); *Flood v. U. S.*, 36 F. (2d) 444 (C. C. A. 9); *U. S. v. Sager*, 49 F. (2d) 725, 729 (C. C. A. 2); *Farbacher v. U. S.*, 20 F. (2d) 736 (C. C. A. 5); *Edwards v. U. S.*,

18 F. (2d) 403; *Robinson v. U. S.*, 18 F. (2d) 185 (C. C. A. D. C.); *Morrow v. U. S.*, 11 F. (2d) 256, 259, 260; *Nibblelink v. U. S.*, 66 F. (2d) 178 (C. C. A. 6); *Terry v. U. S.*, 7 F. (2d) 28 (C. C. A. 9); *Crinnian v. U. S.*, 1 F. (2d) 643 (C. C. A. 6); *Gart v. U. S.*, 294 Fed. 225 (C. C. A. 3); *McDonald v. U. S.*, 264 Fed. 739 (C. C. A. 1); *Enfield v. U. S.*, 261 Fed. 141 (C. C. A. 8); *Paris v. U. S.*, 260 Fed. 529 (C. C. A. 8); *Fish v. U. S.*, 215 Fed. 544 (C. C. A. 1).

From the foregoing it seems clear that this evidence tending to prove a separate and distinct offense, not charged in the indictment and absolutely disconnected with the conspiracy therein charged was plainly and prejudicially irrelevant and its admission prejudicial error.

Assuming, however, for the sake of argument that the foregoing testimony was relevant, we encounter this rule, stated in *Nigro v. U. S.*, 117 F. (2d) 624, 632, *supra*:

"It is essential to the admissibility of evidence of another distinct offense that the proof of the latter offense be plain, clear, and conclusive. Evidence of a vague and uncertain character regarding such an alleged offense is never admissible. Such evidence tends to lead juries to rest their verdicts upon false issues. It necessitates the trial of matters collateral to the main issue and is extremely prejudicial."

This rule is likewise asserted and applied in *McLafferty v. U. S.*, 77 F. (2d) 715, *supra*; *Gart v. U. S.*, 294 Fed. 66, *supra*; *Paris v. U. S.*, 260 Fed. 529; and *Fish v. U. S.*, 215 Fed. 544.

The substance of the testimony of the witness Campbell was that an indictment was returned on April 25, 1938, in the District in which he officiates against the Wroblewski brothers, charging them with a conspiracy to vio-

late the internal revenue laws of the United States. Five months later, in September, Roth allegedly approached him and asked him whether these brothers had been indicted in his District, and if they had not, whether or not some arrangement could be made to prevent this, and allegedly suggested a bribe of \$500 or \$1,000 if this could be done. Upon the refusal of the witness to make such arrangement, Roth allegedly said that is the way we handle cases in Chicago sometimes.

The uncontradicted facts are as follows:

1. That the Wroblewskis were indicted in the Northern District of Indiana on April 25, 1938 (Ex. 186-B, R. 840).

2. That the Wroblewskis were notified in April that they were indicted in Indiana and called upon to surrender and make bond for their appearance (R. 635).

3. That on May 14, 1938, Edward Wroblewski was arrested in Chicago on a complaint for removal and gave bond for his appearance in the Northern District of Indiana to answer to the indictment and arranged bail for his brother William (R. 635). The record of the removal proceeding is found in the U. S. Commissioner's file (Ex. 186, R. 840) which contains a complaint for removal (Ex. 186-A, R. 840); a certified copy of the Indiana indictment (Ex. 186-B, R. 840); and recognizance of bail (Ex. 186-C, R. 840).

4. That in September, 1938, Roth first became acquainted with Edward Wroblewski and was then and there advised of the Indiana indictment and engaged to defend the Wroblewskis on their trial (R. 676, 838-839). Roth met William for the first time a week before the trial in Indiana (R. 844).

5. After engagement by Edward Wroblewski and be-

fore Roth went to Indiana he called at the Commissioner's office in Chicago and examined the Commissioner's file and the indictment contained therein, having been advised by his client at the time of engagement, of the removal proceedings in Chicago and the giving of bond in Chicago for appearance in Indiana for trial (R. 839). Roth introduced in evidence the public records he examined in the Commissioner's office, among which was the Indiana indictment returned April 25, 1938, as Exhibit 186-B (R. 840).

6. After examining the indictment which charged a conspiracy and again conferring with Edward Wroblewski concerning the overt acts which charged an act for which his brother William had been punished under a substantive offense a year prior thereto, Roth stated to Edward Wroblewski that he would go to Indiana and confer with the prosecutor (R. 841), to bring this to his attention with a view of disposing of the case with a recommendation of nominal punishment on a proposed plea of guilty (R. 842).

Roth testified that he had full knowledge of the indictment before going to Indiana and that he went there for the purpose of conferring with the prosecutor handling the case to bring to his attention the fact that William Wroblewski had been punished for the same acts and conduct a year prior thereto on a substantive charge, which was the subject of the overt act alleged against William in the second indictment and because of this, to try to dispose of the case on a recommendation of nominal punishment on a proposed plea of guilty (R. 842).

The testimony of Roth is inherently probable backed up by all the physical and inherent facts related to this subject matter, and is uncontradicted.

Campbell's testimony is absolutely at war with all the

probabilities in the matter to which he testified and is unbelievable and absurd.

Therefore to consider that Campbell told the truth in this matter when taking into consideration Roth's broad and varied experience as a practitioner in the federal court (R. 796, 749, 782, 783, 833-834, 889, 890) that he did in this instance, and such was his customary practice, to offer sums of \$500 and \$1,000 to prevent the return of indictments which he had known to have been returned for at least five months, is to assert that the writ of "*de lunatico inquirendo*" instead of an indictment would be the Government's appropriate remedy.

Wherefore, petitioner resubmits that the judgment of the lower court be reversed.

Respectfully submitted,

EDWARD M. KEATING,

Counsel for Petitioner.

CHARLES ELMORE CROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No.

~~31~~ 32

ALFRED E. ROTH,

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vs.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petition

ALFRED E. ROTH,
10 N. Clark St.,
Chicago, Ill.

Pro se.

INDEX.

PAGE

SUBJECT INDEX.

Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement Of The Case.....	4
Specifications of errors to be urged.....	11
Reasons for granting the writ.....	12
Conclusion	35
Appendix	37

TABLE OF CASES CITED.

Adler v. U. S., 182 Fed. 464 (C C A 5).....	18
Alford v. U. S., 282 U. S. 687	16
Anderson v. U. S., 260 Fed. 557 (C C A 8).....	30
Angle v. U. S., 172 Fed. 658 (C C A 4).....	28
Asgill v. U. S., 60 Fed. (2) 776 (C C A 4).....	16
Bartlett v. U. S., 106 Fed. 884 (C C A 8).....	30
Beck v. U. S., 33 Fed. (2) 107 (C C A 8).....	30
Berger v. U. S., 295 U. S. 78.....	22, 26
Bopp v. People, 279 Ill. 184.....	31
Bowkin, et al. v. U. S., 11 Fed. (2) 484 (C C A 5).....	30
Brady v. U. S., 39 Fed. (2) 872 (C C A 9).....	25
Bratton v. U. S., 73 Fed. (2) 795 (C C A 10).....	29
Brenner, et al., v. U. S., 287 Fed. 636 (C C A 2).....	30
Collenger v. U. S., 50 Fed. (2) 345 (C C A 7).....	16
Collins v. U. S., 253 Fed. 609 (C C A 9).....	30
Cook v. U. S., 138 U. S. 157.....	25
Cossack v. U. S., 63 Fed. (2) (C C A 9).....	16
Crowley v. U. S., 194 U. S., 461.....	33, 34
Dist. of Co. v. Clawans, 300 U. S. 617, 632.....	18

TABLE OF CASES CITED (continued).

Ex Parte Bain, 121 U. S. 1.....	28
Farkas v. U. S., 2 Fed. (2) 644 (C C A 2).....	16
Fontana v. U. S., 262 Fed. 283 (C C A 8).....	30
Frantz v. U. S., 62 Fed. (2) 737 (C C A 6).....	23
Gagnon v. U. S., 193 U. S. 457.....	27
Gibaldi v. U. S., 287 U. S. 112.....	30
Hass v. U. S., 93 Fed. (2) 113 (C C A 9).....	25
Heard v. U. S., 255 Fed. 829 (C C A 8).....	16
Hoypt v. Utah, 110 U. S. 574.....	33
King v. U. S., 112 Fed. 988, 995, 996 (C C A 5).....	16
Logan v. U. S., 144 U. S. 263.....	25, 31
McKenna, et al. v. U. S., 127 Fed. 88.....	30
Miller v. U. S., 136 Fed. 581 (C C A 7).....	30
Minner v. U. S., 57 Fed. (2) 506 (C C A 10).....	16
Naftzger v. U. S., 200 Fed. 494, 499 (C C A 8).....	25
Norris v. Alabama, 294 U. S. 587.....	13
Paddock v. U. S., 79 Fed. (2) 872 (C C A 9).....	25
People v. Clempitt, 362 Ill. 534.....	34
People v. Fudge, 342 Ill. 574.....	34
People v. Lindquist, 289 Ill. App. 250.....	34
People v. Mack, 367 Ill. 481, 487, 488.....	34
People v. Mankus, 292 Ill. 435.....	34
People v. Schraeberg, 347 Ill. 392.....	34
People v. Traeger, 372 Ill. 11.....	32
Pierie v. U. S., 275 Fed. 352 (C C A 8).....	30
Pierre v. State of La., 306 U. S. 354, 358.....	14
Pointer v. U. S., 151 U. S. 396.....	34
Quercia v. U. S., 289 U. S. 466.....	21, 22, 23
Rainey v. The People, 8 Ill. (3 Gil.) 71.....	28, 34
Renigar v. U. S., 172 Fed. 646 (C C A 4).....	28
Smith v. State of Texas, 61 S. Ct. 164.....	14
State v. Cantrell, 21 Ark. 127.....	34
State v. Heaton, 23 W. Va. 773.....	28
Terrell v. U. S., 6 Fed. (2) 498 (C C A 4).....	23
Tynan v. U. S., 297 Fed. 177 (C C A 9).....	34
U. S. v. Cruikshank, et al., 92 U. S. 542.....	30
U. S. v. Dietrich, 126 Fed. 664 (C. C. Neb.).....	30
U. S. v. Dressler, 112 Fed. (2) 972 (C C A 7).....	25
U. S. v. Gale, 109 U. S. 65.....	34
U. S. v. Hagan, 27 Fed. Supp. 214 (D. C. Ky.).....	30

TABLE OF CASES CITED (continued).

U. S. v. Lewis, 192 Fed. 633 (D. C. Mo.).....	34
U. S. v. N. Y. C. & H. R. R. Co., 146 Fed. 298 (C. C. N. Y.)	30
U. S. v. Sager, 49 Fed. (2) 725 (C C A 2).....	30
Wheaton v. U. S., 113 Fed. (2) 710 (C C A 3).....	25
Williams v. U. S., 93 Fed. (2) 685 (C C A 9).....	23
Yundt v. The People, 65 Ill. 373.....	28

STATUTES CITED.

Section 88, Title 18, U. S. C. A.....	6
Section 411, Title 28, U. S. C. A.....	33
Section 412, Title 28, U. S. C. A.	32
Section 91, Title 18, U. S. C. A.....	30
Section 1, Chap. 78, Ill. Rev. Statutes, 1939.....	32
Section 25, Chap. 78, Ill. Rev. Statutes, 1939.....	32

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Petition

*To the Honorable, the Chief Justice of the United States
and the Associate Justices of the Supreme Court of the
United States:*

Alfred E. Roth, petitioner, *pro se*, respectfully prays
that a Writ of Certiorari issue to review judgment of the
Circuit Court of Appeals for the Seventh Circuit, entered
in the above cause (R. 1140), affirming the judgment of
the District Court for the Northern District of Illinois.

Opinion Below.

The opinion of the Circuit Court of Appeals (R. 1117)
is reported in 116 Fed. (2) 690.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on December 13, 1940 (R. 1140). A petition for re-hearing was denied January 23, 1941 (R. 1239). The jurisdiction of this court is invoked under Section 347 (a) Title 28 United States Code.

Questions Presented.

1. Whether the total and systematic exclusion from the jury box, from which the petit jury was drawn, of females who were not members of a private league of women voters, and who had not attended jury classes maintained by the league for the purpose of giving instruction to potential jurors and whose lecturers presented the views of the prosecution, who otherwise possessed the requisite qualifications, was a denial of the constitutional right of trial by an impartial jury, and equal protection of the law and due process of law.

2. Whether a defendant is denied due process of law and a fair and impartial trial and deprived of the benefit of the presumption of innocence by the trial judge in (a) limiting the right of cross-examination to show bias, reward by and the coercive effect of government officers, (b) examining witnesses in a manner and making remarks favorable to the prosecution and prejudicial to the accused, (c) making statements of alleged facts based on his personal knowledge, (d) in admitting in evidence government agents' reports containing the criminal history of a co-defendant and ex parte statements tending to involve the co-defendant in a violation of the law.

3. Whether a defendant is denied a fair and impartial trial when the prosecution has resorted to persistent prejudicial misconduct.

4. Whether the evidence is so utterly insufficient as to require a reversal of the judgment.

5. Whether a defendant can be put to trial on an indictment which the record fails to show was returned in open court.

6. Whether a defendant may be put to trial on an indictment which is vague, indefinite and uncertain, and whether the charge of conspiracy will lie when the commission of the offense requires a concert of action by a plurality of agents.

7. Whether the appointment by the court of one defendant's counsel, over his objection on the ground of inconsistency of defenses, to represent a co-defendant so affects an effective representation as to result in prejudice to all defendants.

8. Whether a federal grand jury was illegally constituted and void because of the intentional, total exclusion of the names of women from the jury box from which the grand jurors were drawn, the state law making it mandatory that women be placed on jury lists, and whether such an exclusion was a denial of equal protection of the law and of due process of law.

Statutes Involved.

1. Section 88, Title 18, U. S. C. A.
2. Section 91, Title 18, U. S. C. A.
3. Section 411, Title 28, U. S. C. A.
4. Section 412, Title 28, U. S. C. A.
5. Section 1, Chap. 78, Ill. Rev. Statutes 1939.
6. Section 25, Chap. 78, Ill. Rev. Statutes 1939.

The statutes are set out in the appendix.

STATEMENT OF THE CASE.

The petitioner was convicted upon the second count of an indictment (R. 22), the first count having been dismissed, together with four other defendants, Daniel D. Glasser, Norton I. Kretske, Anthony Horton and Louis Kaplan, of conspiracy to defraud the United States, in the Northern District of Illinois, of the conscientious services of Daniel Glasser, an assistant United States Attorney (Sec. 88 Title 18 U.S.C.). Glasser, Kretske and Kaplan were each sentenced to 14 months in a penitentiary, Horton to one year and one day in a penitentiary. The petitioner was sentenced to pay a fine of \$500.00. Kaplan is involved in other criminal proceedings and did not appeal. Horton was granted probation and did not appeal.

The petitioner is engaged in the private practice of law, chiefly in federal practice. Glasser was an Assistant Attorney from March 13, 1935, to June 29, 1939. Kretske, while engaged in the private practice of law, referred to the petitioner for trial several federal matters (R. 805). Many lawyers referred federal matters to the petitioner (R. 749, 796, 889, 890, 783).

The trial was a long one, consuming about 26 days. The record is voluminous and the exhibits equally so, consisting of Grand Jury records, court files, agents' reports, criminal and civil pleadings and a mass of other material and it is clear that the trial was so colored by constant errors that the petitioner was tried in an atmosphere fatal to the administration of justice.

The theory of the prosecution as announced by the prosecutor (R. 154) was that there was a conspiracy on foot to

solicit certain persons to make promises. Although the government was ordered to file a bill of particulars naming the persons who made the solicitations and what persons were solicited and on what dates, and at what places and what amounts, it is significant that the name of this petitioner is not even mentioned in the entire 12 pages of the bill of particulars (R. 77-89) nor is there any inference therein of any wrongful act on the part of this petitioner.

The record clearly shows that the petitioner did not represent any client in any criminal case until after the institution of a prosecution and the defendants apprehended, and, in the libel (civil cases) after forfeiture proceedings were begun. Not one client testified that the petitioner directly or indirectly solicited him or her, nor that he made any promises other than that he would handle their cases on the merits to the best of his ability.

The Circuit Court of Appeals, in its opinion, stated:

"We think it will suffice if we but enumerate the more important facts and appellants' connection or association with the suits and matters involved in the conspiracy." (R. 1122.)

Three cases in which this petitioner appeared as counsel, with Glasser opposing, were enumerated and he respectfully begs the indulgence of this Court while he briefly reviews them, which he believes will convince this Court that the Circuit Court of Appeals misapprehended the facts in the case and misapplied the law relating thereto.

1. *U. S. v. One Chrysler Sedan.*

The Court (R. 1123) seems to suggest that the petitioner, who represented the claimant, was making an inaccurate statement to the judge trying the libel case when he

stated that the automobile belonged to his client, Rose Vitale, and was not used in connection with the manufacture of alcohol. This statement was based on the sworn pleadings on file with the Alcohol Tax Unit and the United States District Court (Exhibit 36). The opinion infers that because the petitioner was successful over Glasser, who represented the government, that the petitioner was guilty of some wrongdoing. The case was tried on the alcohol tax unit agent's report.

The Circuit Court of Appeals seems to have overlooked the testimony of U. S. District Judge Barnes, who testified for the defense as follows:

"Q. And the point involved here, Judge is this. Were you sufficiently informed concerning the facts involved in that case to make a decision on the law and the evidence?

A. Well, it is the agent's statement. They never testified to more than their statement. They try their cases frequently on their statements, and that statement is not sufficient to forfeit a car. The car was not in the place where the still was, the car belonged to the wife, and I had no more right to take it than I had to take yours.

Q. And anything the agent might have said could not have changed that?

A. Well, he states in writing what he expected to prove. What he expected to swear to.

Q. And under these circumstances, you very often hear the cases without the actual testimony?

A. Very, very frequently.

Q. And did Mr. Roth appear to represent his client, and Mr. Glasser appear to represent the government in a proper fashion?

A. They not only appeared to, they did." (R. 718.)

2. *U. S. v. Elmer Swanson, Anthony Hodorowicz and Clem Dowiat.*

The opinion charges no misconduct on the part of the petitioner. It states (R. 1122) that the petitioner was retained as attorney to defend, having been recommended by Kretske. It also states that the petitioner represented the defendants and that Swanson paid no money to the petitioner for his services. The opinion overlooks that Kretske, after being retained, referred the three defendants to the petitioner for trial and made direct payment to him of a fee (R. 868). The Circuit Court infers that because this case was on motion of Glasser stricken, with leave to reinstate, that the petitioner was guilty of some wrongdoing.

When the petitioner and his clients appeared on the trial date, ready for trial, they learned that the case had been stricken a week prior thereto, with leave to reinstate, without notice to either clients or their counsel (R. 235-236).

The uncontradicted testimony is that the case was stricken with leave to reinstate by Glasser at the direction of the government agent in charge, who advised Glasser they did not have sufficient evidence to convict (R. 918-920).

Corroboration of Glasser's testimony that the case was stricken with leave to reinstate, at the request of the agent in charge, because of the weakness of the evidence, is furnished by the fact that the record discloses the case as never having been reinstated (Exhibit 226) with Glasser out of office a year.

3. *U. S. v. Frank Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clem Dowiat.*

The opinion states (R. 1125) that the petitioner was engaged to represent the defendants and the opinion further states that while the case was pending in the District Court Frank Hodorowicz called at Glasser's office and had a conversation with him (R. 1125). The opinion further states that after this conversation the petitioner's services were dispensed with. The record fails to show any mention of the petitioner or anything concerning him in this conversation or that he had knowledge of it. While the petitioner represented Frank Hodorowicz he conferred with Glasser as to his attitude on a plea of guilty and was advised that his attitude was that of the imposition of a substantial penitentiary sentence (R. 858). The petitioner informed his clients of Glasser's attitude and was discharged as their attorney. Another attorney was substituted and all the defendants were convicted, Glasser prosecuting (R. 859).

The suits in which the petitioner appeared as counsel not enumerated or touched upon by the Circuit Court of Appeals are four in number, as follows:

1. *U. S. v. Paul Svec.*

The substance of the Government's evidence is that the petitioner represented Svec in two criminal cases, Glasser prosecuting. On the trial of the first case Svec was convicted and sentenced to the penitentiary (R. 566). While he was at large on an appeal bond he was again arrested and charged with another offense and after a full hearing before the U. S. Commissioner he was discharged (R. 557-559-564).

2. *U. S. v. Edward Dewes.*

The substance of the government's evidence is that Kretske referred Dewes to the petitioner to try his case. Petitioner tried the case and Dewes was convicted and sentenced to the penitentiary.

3. *U. S. v. Harry Dukatt.*

The substance of the government's evidence is that the petitioner represented Dukatt in a hearing before the U. S. Commissioner where he was discharged. That he was indicted in two cases and entered a plea of guilty to both indictments, being represented by the petitioner and was sentenced to the penitentiary (R. 700-701).

4. *U. S. v. 151 Acres of Land, Etc.*

This case was brought out on cross-examination of the petitioner and involved a libel case. Attorney Sidney Baker tried the case in the District Court. Glasser, representing the government, was victorious. The case was referred to the petitioner by Mr. Baker to prosecute an appeal. The judgment of the lower court was reversed. 99 Fed. (2) 716. The petitioner represented one of the claimants who was indicted while the civil case was pending in the Circuit Court of Appeals (868-869) and was thereafter substituted by another lawyer who disposed of the criminal case (R. 880-881).

The testimony of Alexander Campbell, which of course had nothing to do with any case in the Northern District of Illinois, that the petitioner went to see him in Indiana five months after the Wroblewskis had been indicted in the Northern District of Indiana to ask him if something could be done about not indicting the Wroblewskis in the Northern District of Indiana is incredible and contradicted

by the physical facts, as the court records (Ex. 186-A and 186-C), correspondence (Ex. 137, R. 847) and testimony (R. 676, 838, 840) show that the Wroblewskis were under indictment for five months in the Northern District of Indiana and that the petitioner and the Wroblewskis had knowledge of this fact at the time of the alleged conversation.

Thus, the petitioner vigorously contends that the opinion of the Circuit Court of Appeals is based entirely on erroneous inferences and that the evidence is utterly insufficient to establish any guilt. No inference of guilt can possibly be drawn from accepting employment in defending alcohol cases or that Glasser represented the government in some cases when the petitioner was on the other side.

The trial judge prejudicially limited the right of cross-examination and throughout the trial committed acts of advocacy advantageous to the prosecution and injurious to the defense in examining witnesses and cross examining the petitioner in a hostile manner and in making remarks of a nature favorable to the prosecution and prejudicial to the petitioner's defense and his presumption of innocence. Some of the acts, with record references, are set out under the reasons for granting the writ.

In his anxiety to convict Glasser, which is apparent from a reading of the record, the prosecutor resorted to the most unfair tactics, so that the petitioner was tried in a foul and hostile atmosphere, which resulted in his wrongful conviction. Some of the instances with record references of the prosecutor's tactics are set out under the reasons for granting the writ.

The petitioner sincerely contends that because he appeared in a few cases against Glasser, which were re-

ferred to the petitioner by Kretske, the petitioner was a necessary victim in this case in a desire to "get" Glasser (R. 948).

Specification of Errors to be Urged.

1. The Circuit Court of Appeals erred in holding that it was a matter of discretion of the District Court, which was not abused in holding that the total and systematic exclusion from the jury box, from which the petit jury was drawn, of females who were not members of a private league of women voters, and who had not attended jury classes maintained by the league for the purpose of giving instruction to potential jurors and whose lecturers presented the views of the prosecution, who otherwise possessed the requisite qualifications, was not a denial of the constitutional right of trial by an impartial jury.

2. The Circuit Court of Appeals erred in holding that the acts and conduct of the trial judge did not deprive the petitioner of the presumption of innocence and prejudice his rights to a fair and impartial constitutional trial.

3. The Circuit Court of Appeals erred in holding that the misconduct of the prosecuting attorney permitted and sanctioned by the trial judge was not prejudicial to the petitioner and a denial of a fair and impartial trial.

4. The Circuit Court of Appeals erred in affirming the judgment based on no evidence, out which was brought about because of the acts and conduct of the trial judge and prosecutor and the cumulative errors which so permeated the trial that the petitioner was deprived of a fair and impartial trial.

5. The Circuit Court of Appeals erred in holding that the record showed that the indictment was properly returned in open court by the grand jury.

6. The Circuit Court of Appeals erred in holding that the indictment sufficiently apprised the petitioner of the charge against him and in holding that the commission of the conspiracy offense as charged does not require concert of action by a plurality of agents.

7. The Circuit Court of Appeals erred in holding that the appointment of Glasser's attorney over his objection, because of inconsistency of defenses to represent Kretske, was not prejudicial.

8. The Circuit Court of Appeals erred in holding that the grand jury was lawfully constituted, notwithstanding the deliberate exclusion of women, who were qualified jurors, from the jury box from which the grand jurors were selected.

Reasons for Granting Writ.

I.

The petitioner was denied the constitutional right to trial by a fair and impartial jury.

Affidavits for a new trial charge, in substance, that all the female names placed in the box from which the petit jurors were selected were presented to the clerk of the court from a list made up by the Illinois Women Voters league to the exclusion of all other females; that the females selected by said league had attended jury classes maintained for the purpose of giving instructions to potential jurors; that lectures before the jury classes presented the views of the prosecution; and that females otherwise qualified and eligible for jury service were deliberately excluded from the box; that first knowledge was acquired after verdict (R. 1049, 1057).

The affidavits were not controverted by the government and no testimony was taken. An offer of proof was contained in Glasser's affidavit (R. 1051).

It is worthy of note that the article of the American Bar Journal referred to in the affidavit in support of a motion for new trial, written by one of the women who was rejected as a juror in the instant case, and who writes of the experiences of those women who were not accepted on the panel, states that with one exception all the women were league members, while the men had apparently been selected at random (R. 1052).

The limitation of the body of citizenship from which female jurors were selected, struck at the very fundamental right of trial by jury and so perverted that right so as to amount to no jury at all.

The Circuit Court of Appeals held that The District Court was convinced that the appellants were not prejudiced, and under such circumstances they can not say he abused his discretion (R. 1139).

It is respectfully submitted that the right to a fair and impartial jury is a substantial right, guaranteed by the United States Constitution and due process of law, and not a right that is subject to the discretion of a District Court.

It is respectfully submitted that the Seventh Circuit Court of Appeals has rendered a decision in conflict with the applicable decisions of this Court.

In *Norris v. Alabama*, 294 U. S. 587, this court held that it was a denial of the equal protection of the laws, contrary to Fourteenth Amendment to exclude all persons of the African race, solely because of their color, from serving as grand or petit jurors.

In the instant case all female jurors not members of a private league of woman voters were excluded from petit jury service.

“It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.”

Smith v. State of Texas, 61 S. Ct. 164.

The limitation of female jurors to a special organization as in the instant case is not truly representative of the community.

“Indictment by grand jury and trial by jury cease to harmonize with our traditional concepts of justice at the very moment particular groups, classes or races, otherwise qualified to serve as jurors in a community, are excluded as such from jury service.”

Pierre v. State of Louisiana, 306 U. S. 354, 358.

In the instant case the females as a class, not members of a private league of women voters, were excluded from jury service.

II.

The failure of the trial judge to maintain an attitude of unswerving impartiality between the government and the accused was a denial of due process of law and violated the petitioner's right to a fair and impartial trial, as follows:

(a) limiting the right of cross-examination to show bias, reward by and the coercive effect of government officers.

Government witness Swanson was a defendant in a criminal case pending in the U. S. District Court at Cleveland.

He testified to having had interviews with agent Bailey, who was active in bringing about the present prosecution (R. 712). Swanson was asked the following question on cross-examination: "Well, he, (meaning Bailey) could get that case called (for trial) or having something to do with it." The court sustained the objection of the prosecution and stated, "That is entirely out of order. Mr. Bailey is not running the courts down in Cleveland" (R. 237). The purpose of the question obviously was not as the trial court seemed to think, that Bailey was not running the courts in Cleveland, but to show the state of mind of the witness as possibly cross-examination might develop, that his testimony was biased because he was under the coercive effect of the officers of the United States who were party to the present prosecution.

On July 19, 1939, Government witness Dewes was sentenced to be confined in a penitentiary for a period of two years. On July 27, 1939, while still detained in Chicago, he gave the government a statement (Exhibit 114). He was brought back from Leavenworth Penitentiary and lodged in the county jail at Chicago on September 6 or 7, 1939, where he was held seven or eight weeks, during which time he was brought to the Federal Building about twenty times. Then he was taken to Milan, Michigan, from whence he was brought to testify (R. 554). At the trial he testified to matters not given in his statement of July 27, 1939.

He was asked, on cross-examination, whether or not he was now at Milan, Michigan. The court, in sustaining the prosecutor's objection, stated, "They are both Federal penitentiaries." When further asked on cross-examination, "Isn't it a fact that you are in what is known as a reformatory now," the court sustained the prosecutor's objection and stated, "You are in the Milan penitentiary

now." The witness then said, "Yes, sir" (R. 555). The cross-examiner's obvious purpose was to show that the prisoner had received favorable treatment in return for his testimony by being detained at Milan, Michigan, a federal reformatory, when he had been sentenced to confinement in a penitentiary.

It is respectfully submitted that the Seventh Circuit Court of Appeals has rendered a decision in conflict with the decisions of this Court and in conflict with the decisions of the Second, Fourth, Fifth, Eighth, Ninth and Tenth Circuit Courts of Appeals.

"Cross-examination is a matter of right. It is prejudicial error to limit cross-examination of a government witness when the purpose of cross-examination is to show bias, coercion of situation, or expectation or hope of reward."

Alford v. U. S., 282 U. S. 687.

Farkas v. U. S., 2 Fed. (2) 644, 647 (C. C. A. 2).

King v. U. S., 112 Fed. 988, 995, 996 (C. C. A. 5).

Collenger v. United States, 50 Fed. (2) 345, 350, 351 (C. C. A. 7).

Cossack v. United States, 63 Fed. (2) 511, 516 (C. C. A. 9).

Asgill v. United S., 60 Fed. (2) 776 (C. C. A. 4).

Minner v. U. S., 57 Fed. (2) 506 (C. C. A. 10).

Heard v. U. S., 255 Fed. 829 (C. C. A. 8).

Mr. Campbell, the District Attorney, testified as a witness in rebuttal, and was required by Mr. Ward, the prosecutor, to give a yes or no answer to the question, "Q. At that time did you, preceding Mr. Glasser's entering the grand jury room to testify as a witness, have a conversation with him in which you used the following language—

'Dan, I knew you were going into the grand jury room this morning and I thought I would go in and put in a good word for you. I wanted to tell that grand jury there was nothing in your official conduct that would require investigation' " (R. 1041). Mr. Campbell at first replied, "I had a conversation with him—" Mr. Ward interrupted, "Q. Did you make that statement? A. I did not. Mr. Ward: Cross-examine."

Whereupon Mr. Stewart stated, "Now, your Honor, we had this discussion in chambers and the record does not show our talk there. Is it your Honor's ruling that on cross-examination I am limited to what he just stated now? The Court: That is all. Mr. Stewart: Because, if I am not, I would like to go into other matters to show which is most likely true— The Court: No, you are limited to it. Mr. Stewart: If I am so limited there is no cross-examination."

The court called counsel into chambers before Mr. Campbell took the witness stand and the court evidently impressed upon counsel that the cross-examination must be limited as stated in the colloquy above quoted. This ruling shut off the right of cross-examination.

It is evident that Mr. Campbell and Glasser had a conversation similar to the one narrated by Glasser, as Mr. Campbell began to describe a conversation before being stopped by Mr. Ward. By this ruling of the court the defense was prevented from attempting to show by cross-examination of Mr. Campbell that he made remarks substantially similar to these testified to by Glasser. Defense counsel were also prevented by this ruling from attempting to refresh Mr. Campbell's recollection regarding the alleged matter and were also prevented from inquiring as

to whether or not the witness had ever made any statements inconsistent with his denial of this conversation.

“Cross-examination should be allowed as to details corroborative of defense contentions.”

Dist. of Col. v. Clawans, 300 U. S. 617, 632.

It is respectfully submitted that the Seventh Circuit Court of Appeals rendered a decision in conflict with the applicable decision of this Court.

(b) examining witnesses in a manner and making remarks favorable to the prosecution and prejudicial to the accused.

After District Judge Barnes testified in the Chrysler sedan case that the case was tried on the agent's statement, as is frequently done (R. 717-718) and after the petitioner had also testified on cross-examination that the case was tried on the agent's report (R. 873) the court asked the petitioner the following question: “Was any witness sworn or testimony taken?” This question which compelled an answer of “No,” deprived the petitioner of Judge Barnes' testimony and tended to convey to the jury that witnesses have to be sworn or testimony taken in the Federal Court in order that a case be disposed of, and because no witness was sworn or testimony taken some irregularity existed in the manner in which the case was tried.

During the cross-examination of Anthony Hodorowicz by the defense, the Court interrupted and examined the witness to show that “a full disclosure” of the facts was not made by Glasser and that he was not interrogated by any lawyers before Judge Woodward (R. 348). There was only one appearance before Judge Woodward, and that was the arraignment, at which time, of course, no facts would be stated to the court, and the witness would not be interrogated. The petitioner represented Anthony Hodo-

rowicz, and the effect of the examination by the court created an inference that Glasser and the petitioner were withholding facts from the court.

The court examined government witness Swanson in a sarcastic manner, detrimental to the defense, saying in a declarative question, "The case just dropped out of mid air"? (R. 232).

During the re-direct examination of government witness Anthony Hodorowicz, who was in the same case with Swanson, the court summed up and repeated some of the contentions of the government as if conclusive against the petitioner, "You were never convicted, never paid a fine, and never went to jail. Answer. No" (R. 346).

The court questioned government witness Anthony Hodorowicz (R. 345) to show that the witness did not give to the petitioner, his attorney, the information from which the petitioner drew a rough diagram (Exhibit 38), the court assuming it to be a plan of the dimensions and layout of the still involved, thereby indicating to the jury that the petitioner obtained such information illegally from Glasser. Exhibit 38 shows that it is a diagram of the vicinity of Stony Island Avenue and 69th Street, pointing out where the witness, Anthony Hodorowicz, said he was apprehended, and does not indicate any dimensions of any still or layout of the plant as suggested by the court in his questions.

"The impartiality of the judge—his avoidance of the appearance of becoming the advocate of either one side or the other of the pending controversy which is required by the conflict of the evidence to be finally submitted to the jury—is a fundamental and essential rule of especial importance in criminal cases."

Adler v. The U. S., 182 F. 464, (C. C. A. 5).

When Edward Wroblewski testified that the petitioner was his lawyer and after the witness had testified in response to the prosecutor's questions that he did not remember how he happened to go to the petitioner, the court conducted a lengthy cross-examination (R. 644-646), as to how he got acquainted with the petitioner and in one instance said, "You know something about how you happened to hire Mr. Roth. Now tell us the story about it." After asking a number of questions the court again stated, "And you don't want to tell us how you got to Mr. Roth's office," and then again stated, "Why don't you remember? Is there any reason why you should not remember?" This had to do with the petitioner's employment in a case not in the Northern District of Illinois and was immaterial to the issue being tried. The lengthy cross-examination of this witness tended to create the prejudicial inference that the witness was concealing something concerning the petitioner simply because he could not recall just how he happened to select the petitioner as his lawyer and that there was something irregular about his employment.

During the cross-examination of Kretske, the court said: "In the average case there is nothing difficult about the trial of any of those cases" (R. 816). This led the jury to believe that there was something irregular about Kretske's conduct in obtaining the assistance of the petitioner for the trial defense of alcohol cases, none of which had Kretske ever tried, either for the government when an assistant United States attorney or the defense. This impression reacted against the petitioner as well as the others, as it suggested irregularity in the prosecution.

(c) in cross-examining petitioner in a manner and making remarks injurious to petitioner's credibility and defense.

During the cross-examination of the petitioner the following occurred:

"Mr. Poust: Mr. Roth is not deaf and neither are the jury. There is no cause for Mr. McGreal to yell at the witness.

The Court: That is his method of cross-examining. He may proceed.

Mr. McGreal: I may be a little deaf myself.

Mr. Poust: I noticed when they cross-examined the Judge they did not yell.

The Court: Mr. McGreal is not cross-examining a Judge. I have observed Mr. McGreal's method of cross-examination and he may proceed."

This remark tended to create the inference that a defendant is not entitled to the same consideration as other witnesses and detracted from the weight of his testimony.

"It is important that hostile comment of the judge should not render vain the privilege of the accused to testify in his own behalf."

Quercia v. U. S., 289 U. S. 466.

On cross-examination of the petitioner the prosecutor inquired as to whether or not Glasser would be required to disclose all the evidence the government had in a still seizure, in connection with the criminal case while trying the civil case, at which the petitioner was not present, and the petitioner stated that he did not know if Glasser did this. The court then said, "You examined the case and the record on appeal. You must have, if you made an appeal. Then you know just as much about it as if you were present in court" (R. 870). An examination of the record of the trial of a civil case would not disclose whether

or not Glasser had disclosed all the evidence in his possession concerning the criminal case growing out of the same seizure. These remarks tended to discredit the witness in the eyes of the jury, since he could not say that Glasser disclosed all the evidence in the criminal case on the trial of the civil case.

During the cross-examination of the petitioner the court remarked, "Well, he (meaning the petitioner) has a lot of last answers" (R. 878). This tended to infer that the petitioner made different and conflicting answers, while testifying, when in fact no such conflict in his testimony existed.

This is not a case of confining an act to a single instance but one where many acts occurred, tending to create prejudicial inferences with a probable cumulative effect upon the jury which couldn't be disregarded as inconsequential. *Berger v. U. S.*, 295 U. S. 78.

"The influence of the trial judge on the jury is necessarily and properly of great weight. His slightest word or intimation is received with deference and may prove controlling."

Quercia v. U. S., 289 U. S. 466.

It is respectfully submitted that the Seventh Circuit Court of Appeals has rendered a decision in conflict with the applicable decisions of this Court.

(d) in making statements of alleged fact based on his personal knowledge.

The Judge cross-examined Glasser in regard to a certain Nick Abosketes as follows:

The Court: Did you know at that time that Nick Abosketes was under indictment in the Eastern and Western Districts of Wisconsin?

A. No, sir.

Q. Did you make any inquiry?

A. No, sir; you see, my job was strictly to prosecute.

Q. You were interested in getting Nick Abosketes?

A. Yes, sir (R. 941).

At page 943 the judge re-emphasized this matter as follows: "I think my impression was that there were two indictments pending in Wisconsin against Nick Abosketes on February 25, 1938. I will ask the District Attorney's Office to check with the Alcohol Division sometime during the day, to make sure about it."

At page 1030, the judge said: "At my request, the government has furnished me with this. Let the record show that Nick Abosketes was indicted in the Western District of Wisconsin on January 27, 1936, and that he was indicted in the Eastern District of Wisconsin on July 30, 1938." * * * "To the indictment in the Western District he pled guilty and was sentenced." * * * "After that the indictment in the Eastern District was dismissed. It covers the same subject. I know that for a fact." * * * "I happen to know all about Nick Abosketes."

The law is well settled that the trial judge should not assume the role either of an advocate or witness for the prosecution.

Quercia v. U. S., 289 U. S. 466.

Terrell v. U. S., 6 Fed. (2) 498 (C. C. A. 4).

Williams v. U. S., 93 Fed. (2) (C. C. A. 9).

Frantz v. U. S., 62 Fed. (2) 737 (C. C. A. 6).

It is respectfully submitted that the Seventh Circuit Court of Appeals has rendered a decision in conflict with

the applicable decisions of this court and in conflict with the decisions of the Fourth, Fifth, Sixth and Ninth Circuit Courts of Appeals.

(e) in admitting in evidence government agents' reports containing the criminal history of a co-defendant and ex parte statements tending to involve the co-defendant in a violation of the law.

Exhibits 81 and 113 introduced in evidence (R. 532, 533) contain a statement of various investigators' reports and the proposed testimony of witnesses, tending to implicate the defendant, Kaplan, in connection with the operation of an illicit distillery. The report describes his racial descent and states that he was reputed to be a bootlegger, worth \$200,000.00, that he was arrested in connection with a killing, and that he was sentenced to pay a fine for violation of the National Prohibition Act.

The Circuit Court of Appeals held that the exhibits threw light upon the question whether the United States was being deprived of the honest and conscientious services of an Assistant United States Attorney and that the jury was instructed that the contents of the reports were not admissible against this petitioner (R. 1132).

The exhibits were not introduced for the purpose of notice to Glasser that he had a case to present to the grand jury and to attempt to prove that he had not done so. It was not contended that he did not present the cases and the government's evidence shows that he did present them (R. 528-529).

The criminal history of Kaplan and the ex parte statements prepared by the government agents were hearsay of the most pronounced kind and a denial of the right to be confronted with the witnesses.

The introduction of irrelevant, prejudicial, hearsay statements is reversible error.

Cook v. U. S., 138 U. S. 157, 184, 34 L. Ed. 908, 913.

U. S. v. Dressler, 112 Fed. (2) 972 (C. C. A. 7).

Hass v. U. S., 93 Fed. (2) 113, 125, 126, 127 (C. C. A. 9).

Paddock v. U. S., 79 Fed. (2) 872, 873, 874 (C. C. A. 9).

Brady v. U. S., 39 Fed. (2) 312, 314 (C. C. A. 8).

Naftzger v. U. S., 200 Fed. 494, 499, 50 (C. C. A. 8).

Where prejudicial, incompetent evidence is introduced against any alleged conspirator, such is ground for reversal as to all of the defendants.

Logan v. U. S., 144 U. S. 263.

Wheaton v. U. S., 113 Fed. (2) 710 (C. C. A. 3).

It is respectfully submitted that the Seventh Circuit Court of Appeals rendered a decision in conflict with the applicable decisions of this court and in conflict with the decisions of the Third, Eighth and Ninth Circuit Courts of Appeals.

III.

The prosecutor resorted to persistent prejudicial misconduct and the petitioner was denied a fair and impartial trial.

The prosecutor refused to permit the defendant Glasser to examine files and reports in his possession for the purpose of refreshing his recollection in cross-examination, notwithstanding the order of the court to that effect (R. 980-982).

The prosecutor and judge conducted a minute and searching cross-examination regarding what education Glasser had to prepare for admission to the bar (R. 989-991).

In the interest of brevity the petitioner can not review and set up many instances of unfair tactics. In the event the petition for certiorari is granted they will be more fully set out.

It is respectfully submitted that the Circuit Court of Appeals rendered a decision in conflict with the applicable decision of this Court in *Berger v. U. S.*, 295 U. S. 78.

IV.

The evidence is utterly insufficient and requires a reversal in this case.

The petitioner respectfully urges that under the unusual circumstances of this cause and the close connection of the lack of evidence with the other points raised, it is appropriate for consideration.

V.

The record fails to show that the indictment was returned in open court by the grand jury.

The record shows that the September, 1939 grand jury was discharged on September 29, 1939 (R. 39) and there existed no record of the return of any indictments on that day.

On October 30, 1939, there was created for the first time a purported record that the grand jury returned four indictments in open court on September 29, 1939, with the

notation, "Added 10/30/39" (R. 39). It is significant to note that the purported record was made after October 12, 1939, when the petitioner was given leave to file a motion to quash (R. 40) and one day before the petitioner filed his motion to quash on October 31, 1939 (R. 40).

The Circuit Court of Appeals stated that the face of the indictment contains the notation, "A true bill," "George A. Hancock, Foreman," and the statement, "Filed in open court this 29th day of September, A. D. 1939, Hoyt King, Clerk," and that the record before then shows that on September 29, 1939, at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois the grand jury returned four indictments in open court (R. 1119). The Circuit Court of Appeals obviously gave full force and effect to the record that four indictments were returned in open court on September 29, 1939, notwithstanding the notation, "Added 10/30/39," which is some thirty days after the discharge of the grand jury and with no showing in the record by what authority the addition to the record was made.

The praecipe for the record (R. 132) called for a true and complete record of the return of the indictment and order to file same. All that was supplied appears in the record, page 39. No memorandum of any kind was furnished from which it might appear that the grand jury returned four indictments in open court on September 29, 1939, and that this petitioner was named as a defendant in any of them. Moreover, the record created on "10/30/39" makes no mention of the persons against whom the four indictments were returned.

A record cannot be created where no memorandum of the record exists.

Gagnon v. U. S., 193 U. S. 457.

The notation on an indictment, "Filed in open court" does not meet the legal requirements.

Renigar v. U. S., 172 Fed. 646 (C. C. A. 4).

The declaration of Amend. V to the Constitution, that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury" is jurisdictional.

Ex Parte Bain, 121 U. S. 1.

There must be an affirmative showing in the record that the indictment was publicly returned in open court by the Grand Jury and by its foreman delivered to the clerk.

Renigar v. United States, 172 Fed. 646 (C. C. A. 4).

Angle v. U. S., 172 Fed. 658 (C. C. A. 4).

Yundt v. The People, 65 Ill. 373.

Rainey v. The People, 8 Ill. (3 Gil.) 71.

State v. Heaton, 23 W. Va. 773.

It is respectfully submitted that the Seventh Circuit Court of Appeals has rendered a decision in conflict with the applicable decisions of this Court and in conflict with the decisions of the Fourth Circuit Court of Appeals, and abridges the right, as it exists, in the state of Illinois.

VI.

The indictment is vague, indefinite and uncertain and states the conclusions of the pleader, thereby failing to inform the petitioner of the nature and cause of the accusation.

The charging part of count 2 of the indictment, paragraph 14, appears on page 28 of the record.

The said paragraph does not allege and inform the defendants what the "questions, matters, causes and proceedings" were concerning which the defendant conspired to influence the decision and action of the said officers and employees; or what the "certain frauds on the United States" were; nor does the said paragraph describe the certain acts which the said officer or officers were "to do and to omit from doing" in violation of his or their official duty.

The court, in passing on the demurrer, stated:

"The court is of the opinion that while the indictment is somewhat vague and indefinite, nevertheless it does charge the defendants with conspiracy to defraud the United States. However, I am of the opinion now that the defendants are entitled to a bill of particulars setting forth exactly what is charged and the times, places and persons involved. * * * that it is only right and proper, to lessen their burden of defense and so they may properly prepare, that they know definitely and in particular just exactly what they are charged with. This is not set out as definitely as it ought to be" (R. 160).

Where the indictment leaves a doubt in the mind of the Court concerning the offense intended to be charged it is fatally defective for uncertainty.

Bratton v. U. S., 73 Fed. (2) 795 (C. C. A. 10).

The Circuit Court of Appeals, in passing on the indictment, said:

"To us it *seems* that the indictment sufficiently apprised the appellants of the charge against them." (Petitioner's italics.) (R. 1122.)

In criminal cases the accused has the constitutional right to be informed of the nature and cause of the ac-

cusation. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place and circumstances.

U. S. v. Cruikshank, et al., 92 U. S. 542.

See also:

Miller v. U. S., 136 Fed. 581 (C. C. A. 7).

Beck v. U. S., 33 Fed. (2) 107 (C. C. A. 3).

Bowkin, et al. v. U. S., 11 Fed. (2) 484 (C. C. A. 5).

Anderson v. U. S., 260 Fed. 557 (C. C. A. 8).

Brenner, et al. v. U. S., 287 Fed. 636 (C. C. A. 2).

Fontana v. U. S., 262 Fed. 283 (C. C. A. 8).

McKenna, et al. v. U. S., 127 Fed. 88.

Bartlett v. U. S., 106 Fed. 884 (C. C. A. 8).

Pierie v. U. S., 275 Fed. 352 (C. C. A. 8).

Collins v. U. S., 253 Fed. 609 (C. C. A. 9).

The charge of conspiracy (R. 28) will not lie because the commission of the substantive offense (Sec. 91 Title 18 U.S.C.) charged in the conspiracy requires a concert of action by a plurality of agents. *Gibaldi v. U. S.*, 287 U. S. 112; *U. S. v. Sager*, 49 Fed. (2) 725 (C. C. A. 2); *U. S. v. Hagan*, 27 Fed. Supp. 214 (D. C. Ky.); *U. S. v. N. Y. C. & H. R. R. Co.*, 146 Fed. 298 (C. C. N. Y.); *U. S. v. Dietrich*, 126 Fed. 664 (C. C. Neb.)

It is respectfully submitted that the Seventh Circuit Court of Appeals has rendered a decision in probable conflict with the applicable decision of this court, and in conflict with the decisions of the Second, Fifth, Eighth, Ninth and Tenth Circuit Courts of Appeal.

VII.

The District Court appointed Glasser's attorney to represent Kretske. This was over Glasser's objection (R. 181) on the ground of inconsistency of defenses (R. 167).

It is respectfully urged that this affected the effective representation of Glasser as well as Kretske as to result in prejudice to this petitioner since the prosecution was directed at the failure of Glasser to render conscientious services as an assistant United States Attorney.

Counsel should not be appointed to defend clients having antagonistic interests.

Bopp v. People, 279 Ill. 184.

Error committed as to any one of the defendants in a conspiracy case is error as to all.

Logan v. U. S., 144 U. S. 263.

VIII.

The grand jury was illegally constituted because of the deliberate exclusion of women from the jury box from which the grand jurors were selected.

The indictment was filed September 29, 1939 (R. 38). On October 12, 1939, when called for pleas, defendants were granted leave to file motions within twenty days and continuing the cause for pleas to November 3, 1939 (R. 40). A motion to quash (R. 141) was filed October 31, 1939 (R. 40). A motion to strike the motion to quash was filed by the U. S. Attorney (R. 150).

One of the grounds of the motion to quash was that the federal officials appointed to select grand jurors deliberately excluded all persons of the female sex, on account of their sex, from the jury box from which the grand jurors were drawn, notwithstanding the state law then in effect making it mandatory to include females on jury lists. The affidavit charges that the clerk of the court and the federal jury commissioner refused to follow the state

law on the ground that it was not mandatory. It further charged discrimination and the sufferance of substantial injustice by failure of the officials to follow the state law.

On May 12, 1939, the Illinois legislature amended Section 1 of the so-called "Jury Act" by making it mandatory that women be placed upon the jury list throughout the state (Sec. 1, Chap. 78, Ill. Rev. Statutes 1939), and to the same effect amended Section 2 of the "Jury Commissioners' Act" (Sec. 25, Chap. 78, Ill. Rev. Statutes 1939, particularly applying to counties having a population of 140,000 or more). This amendatory act, it must be conceded, became the law of the state on the date of its approval by the Governor, namely, May 12, 1939, although by virtue of the provisions of the State Constitution, to wit: Article 4 of Section 13, the act did not become effective until July 1, 1939.

The constitutionality of the amended act was sustained on August 8, 1939 in *People v. Traeger*, 372 Ill. 11.

By virtue of Sec. 412, Title 28 U. S. C., the clerk of the District Court for the Northern District of Illinois and the appointed jury commissioner are the persons who place in the box the names of the persons from which the grand jurors were selected.

The Circuit Court of Appeals held that the county boards were privileged to wait until September 1, 1939, by virtue of Sec. 1, Chap. 78, Ill. Rev. Statutes 1939 before including women on the jury lists and since the members of the September, 1939 grand jury were summoned August 25, 1939, there was no irregularity (R. 1118). But a reading of Sec. 1, Chap. 78 is impelling to the conclusion that county boards were required to act before September 1 to make effective the then existing law. "The county board of each county shall at or *before* the time of its meeting

in September, in each year, or at any time thereafter, *when necessary for the purpose of this Act* make a list of a sufficient number * * * of each sex * * * to be known as a jury list."

Moreover, the clerk of the court and the federal jury commissioner are not controlled by any state law fixing their meeting time as annually in September. Their position, as charged in the affidavit and admitted by the government's motion to strike, was that the law was not mandatory and that they were not required to follow it.

Sec. 411, Title 28, U. S. C. provides that jurors in the courts of the United States shall have the same qualifications as in the highest court of law in the respective states *when summoned for service* in the courts of the United States. (Petitioner's italics.)

The Circuit Court of Appeals held that there was no prejudice alleged in any way and that the objection was technical, the reason being that grand jurors do not try the case but merely charge the accused (R. 1118).

The crushing effect of an indictment is no light matter and an accused is entitled to the protection of the Constitution and every law and safeguard to prevent him from being put to trial on an indictment unless it is properly found and returned by a properly constituted grand jury.

The selection of a grand jury by the officers, who by law are the only ones vested with that power, is not a mere defect or imperfection in form. It is a matter of substance which can not be disregarded without prejudice to the accused.

Crowley v. U. S., 194 U. S. 461.

Hoypt v. Utah, 110 U. S. 574.

U. S. v. Gale, 109 U. S. 65.

Renigar v. U. S., 172 Fed. 646 (C. C. A. 4)

U. S. v. Lewis, 192 Fed. 633 (D. C. Mo.).

State v. Cantrell, 21 Ark. 127.

Qualifications of Jurors and mode of their selection are matters for the legislature.

Tynan v. U. S., 297 Fed. 177 (C. C. A. 9).

Where no attempt is made to comply with the legal method provided for the drawing, summoning, or impanelling jurors, a challenge to the array (or motion to quash) must be sustained even though no prejudice is shown.

People v. Mack, 367 Ill. 481, 487, 488.

People v. Clempitt, 362 Ill. 534.

People v. Schraeberg, 347 Ill. 392.

People v. Fudge, 342 Ill. 574.

People v. Mankus, 292 Ill. 435.

People v. Lindquist, 289 Ill. App. 250.

The Illinois State Legislature, having legislated on the qualifications of jurors, and the statute having been construed by the highest court of the state, the statute and the construction are controlling in the United States court.

Pointer v. The U. S., 151 U. S. 396.

The Clerk of the District Court and the jury commissioner should have followed the Illinois statute when organizing the grand jury and should not have deliberately excluded female jurors. It was then the law of the state that women were qualified jurors.

Crowley v. U. S., 194 U. S. 460.

It is respectfully submitted that the Seventh Circuit Court of Appeals has rendered a decision in conflict with the applicable decision of this court and in conflict with the decisions in the Fourth and Ninth Circuit.

CONCLUSION.

Wherefore, for the reasons stated, and for the reason that the Circuit Court of Appeals has so far sanctioned a departure by the lower court from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision, and in furtherance of justice, petitioner respectfully submits that this petition for certiorari should be granted.

Respectfully submitted,

ALFRED E. ROTH,
Pro se.

APPENDIX.

Statutes Involved.

Section 88, Title 18, U. S. C. A., is as follows:

“If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.”

Section 411, Title 28, U. S. C. A. is as follows:

“Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.”

Section 412, Title 28, U. S. C. A. is as follows:

“All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the Clerk of such Court, or a duly qualified deputy clerk, and a commissioner, to be

appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein."

Section 1, Chap. 78, Ill. Rev. Statutes, 1939, reads as follows:

"The county board of each county shall at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct in the county, giving the place of residence of each name on the list, to be known as a jury list."

Section 25, Chap. 78, Ill. Rev. Statutes, 1939, reads as follows:

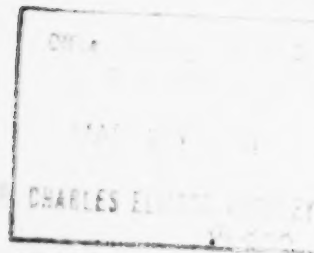
"The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list. The list may be revised and amended annually in the discretion of the commissioners. The name of each person on said list shall be entered in a book

or books to be kept for that purpose, and opposite said name shall be entered the age of said person, his occupation, if any, his place of residence, giving street and number, if any, whether or not he is a householder, residing with his family, and whether or not he is a freeholder."

Section 91, Title 18, U. S. C. A. is as follows:

"Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years."

FILE COPY



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. ~~798~~ 32

ALFRED E. ROTH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY TO BRIEF FOR THE UNITED STATES IN
OPPOSITION.

↓
ALFRED E. ROTH,
Pro Se.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1940

No. 798

ALFRED E. ROTH,

vs.

Petitioner,

THE UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**REPLY TO BRIEF FOR THE UNITED STATES IN
OPPOSITION.**

Replying to point I of the argument (Br. in Opp. 10), preliminarily petitioner desires to state to this Court that foot note 4 p. 13 of the Government's brief in opposition to the effect that he does "not contend that the indictment was not in fact returned in open court" is untrue.¹

¹ Paragraph 3, of the motion to quash indictment (R. 142) states as follows: "Also come said defendants, and each of them and move the Court to set aside and quash the indictment herein against them and each of them on account of and because the said indictment was not properly returned in open court and because the said indictment was filed without the proper order of court directing the receiving and filing of said indictment."

The Government (Br. in Opp. 13) states: "It is evident that this notation ² explicitly identifies the indictment in the instant case as one of the four indictments returned by the grand jury in open court." If this sophomoric conclusion was drawn by anyone other than the Solicitor General of the United States, it would require no answer. Since he has done so, petitioner respectfully requests this Court to re-examine foot note 2 of this reply which will conclusively show that the notation does neither explicitly or otherwise identify "the indictment in the instant case as one of the four indictments returned by the grand jury in open court."

The Government (Br. in Opp. 11) states: "On the face of the indictment in the clerk's own handwriting (See R. 1119) appears the statement 'Filed in open court this 29th day of Sept., A. D. 1939, Hoyt King, Clerk,' * * *." The record reference is to the opinion of the Circuit Court of Appeals which is the basis for the present petition for certiorari and therefore, it is respectfully submitted, should not be cited as authority to show the state of the record in the District Court. There is nothing in the record to show that the notation referred to is in the handwriting of the clerk. As a matter of fact record 3E which contains the notation is a transcript of the face of the manuscript cover furnished by the government printing office which contains as part of the printed matter "Filed in open court".³ It is obvious therefore, that the statement by the Circuit Court of Appeals and the Government is incorrect.

The Government contends (Br. in Opp. 11) that there is no proof in the present record that the indictment was not returned in open court. This contention is untenable for the reason that the burden is on the record to show that it

² "The Grand Jury return 4 Indictments in open court. Added 10/30/39" (R. 39).

³ U. S. Government Printing Office Form No. 195.

was returned in open court, otherwise the provisions of Amend. V of the U. S. Constitution would be nullified.

Finally the Government argues (Br. in Opp. 14) "The defect was, at most, formal * * *." An identical contention was rejected in *Renigar v. United States*, 172 Fed. 646, 655.

Government's point III (Br. in Opp. 18) in attempting to meet petitioner's contention that he was tried by a packed jury (Br. in Opp. 20), states: "* * * petitioners have failed by their bill of exceptions to disclose what transpired on their motion for a new trial. There is, therefore, nothing to show the factual situation presented to the trial court or the grounds upon which that court may have predicated its decision."

The Government in an endeavor to have this Court deny the petition for certiorari tries by the above to import into the record a factual situation which does not and did not exist. The motion for a new trial based on the affidavits filed on April 23, 1940 (R. 1049-1057) was by the trial judge without hearing or argument summarily overruled on April 23, 1940 (R. 1046, 1057, 1059).

The Government tacitly agrees that petitioner's contention is well taken when it states (Br. in Opp. 21): "* * * no organization or group may be allowed to dictate to them [clerk and jury commissioner] what names should be placed in the box and they may not systematically exclude any qualified class * * *." In the instant case a group prepared and presented a list of names all of which were placed in the box (R. 1050, 1057). This left the jury commissioner and the clerk of the court with no function at all.

The Government, though referring to the affidavits filed by petitioners Glasser and Roth (Br. in Opp. 23) states: "It is, moreover, of significance that neither below nor here is it asserted that any women who attended the jury classes

of the Illinois League of Women Voters served on the jury which tried and convicted the petitioners.”

Obviously this is an attempt by the Government to confuse the issues since the affidavit of the petitioner states (R. 1057): “* * * that the female jurors empanelled to try the case of *United States vs. Glasser, et al.*, were selected from the said list to the exclusion of all other females;” and Glasser’s affidavit states (R. 1050): “* * * that all the names of the females placed in the box were presented to the clerk of said court * * * by the Illinois League of Women Voters * * * that the persons selected by said league for presentation to the clerk aforesaid had previously been required to and did attend jury classes maintained for the purpose of giving instructions to potential jurors.”

Point V of the Government (Br. in Opp. 27-28) in meeting the contention of the petitioner that the indictment is vague and indefinite, seems to urge that the granting of a bill of particulars will cure such a defect, and, as this was done in the instant case, there is no cause for complaint. But, the failure of an indictment to define an offense with precision cannot be cured by a bill of particulars. *Jarl v. United States*, 19 F. (2d) 891 (C. C. A. 8). A bill of particulars does not give validity to a void indictment. *Gerson v. United States*, 25 F. (2d) 49 (C. C. A. 8).

The Government in its statement of the history of the case and the facts (Br. in Opp. 3-10) sustains the contention of the petitioner that he is a lawyer to whom Kretske referred a few cases for trial (R. 805) as many other lawyers did (R. 749, 796, 889, 890).

The Government states (Br. in Opp. 5): “Petitioner Roth was an attorney in private practice (R. 833) to whom Kretske referred various persons who were charged with violations of the liquor laws and whose cases were involved

in the instant conspiracy." It is not denied that Kretske referred trial work to the petitioner in a few of the cases.⁴

The Government states (Br. in Opp. 7): " * * * and that Kretske would furnish a lawyer * * *." Government witness Dewes who engaged Kretske testified "He (Kretske) said he would give me a lawyer * * *" (R. 543). All that this proves is that Kretske referred a case to the petitioner for trial.

The Government states (Br. in Opp. 8): "In many of these cases Kretske arranged for Roth to act as the attorney for the defendants (R. 228, 230, 273, 302, 345, 546, 835, 861, 872, 874, 875, 878)." Again all that this proves is that the petitioner acted as attorney in cases referred to him for trial. Petitioner desires, however, to point out that the cases are not as many as the record references seem to indicate. R. 228, 230, 273, 345 and 835 are to one and the same case, namely, the *Elmer Swanson, Anthony Hodorowicz, and Clem Dowiat* case. This case was at the request of the alcohol tax unit stricken with leave to reinstate (R. 918-920). Petitioner prepared for and was ready to go to trial in this case (R. 235-236). R. 302 refers to the *Frank Hodorowicz, Mike Hodorowicz, Peter Hodorowicz and Clem Dowiat* case. The Government is incorrect in stating that Kretske arranged for Roth to act as attorney in this case. The petitioner was engaged directly by Frank Hodorowicz and later discharged by him and another lawyer substituted (R. 859). R. 546 and 878 refer to the case of Edward Dewes who was tried and convicted (R. 858). R. 861 refers to the case of Harry Dukatt who entered a plea of guilty and was sentenced (R. 700). R. 872 and 874 have reference to the same case, the Chrysler Sedan, which was

⁴ It was during the time Kretske was in private practice that he referred cases to the petitioner for trial. The first case referred was January 1938 (R. 834).

ordered returned to the claimant by District Judge Barnes after hearing the case on the report prepared by the alcohol tax unit (R. 718). R. 875 is a repetitious reference to the *Swanson, et al., Dukatt and Chrysler Sedan* cases.

The conversation with Alexander Campbell, inadmissible under any theory, referred to (Br. in Opp. 10) where the Government states that the petitioner attempted to prevent the return of a certain indictment in the Northern District of Indiana is thoroughly contradicted and impeached. The certain indictment referred to was returned in Indiana April 25, 1938 (Exhibit 186A). Edward Wroblewski one of two brothers named as defendants therein testified as follows: "In April 1938 we got a call that we should set ourselves up on bond, that we have a conspiracy case coming up in Indiana. Tony Horton made our bond" (R. 635). Edward Wroblewski further testified he first met and hired Roth when he was preparing his case for trial in Indiana which was a year and a half after April 1937 (R. 676-677) which would fix the time as September 1938.

Petitioner, at Chicago examined the United States Commissioner's removal file (Exhibit 186) and a certified copy of the Indiana indictment (Exhibit 186A) after he was engaged in September 1938 and before he went to Indiana (R. 838-840).

Alexander Campbell testified that the first conversation he had with the petitioner was September 30, 1938 (R. 680). Does it seem reasonable that the petitioner would try to prevent the return of an indictment five months after it had already been returned and the defendants under bond, all of which was known to the petitioner? The petitioner related the conversation had wherein he requested a copy of the indictment and asked to be advised when to appear in court (R. 842). A letter from and signed by Campbell,

dated October 7, 1938, was received by the petitioner complying with his request⁵ (R. 842).

It would unduly lengthen this reply to set out additional correspondence from Campbell contradicting his own testimony from which further argument can be made to meet the contention that the petitioner attempted to prevent the investigation in the instant case. It will be done in the event the petition for certiorari is granted.

The petitioner has reviewed substantially all the evidence of the Government against him as to each case he handled (Pet. Br., 5-9). The Government has not seen fit to comment on a single one other than generally, that the petitioner appeared as attorney in cases referred to him by Kretske.

Certainly there is some protection in the law from the snare of guilty inferences as against innocent ones that may be drawn from the same facts and circumstances.

The road for an attorney is increasingly a difficult one and there are some who view his every action with suspicion. When one has been in the profession for years and has gained a reputation for integrity by many lawyers engaging him in his field, it is such unfortunate occurrences as the present one that emphasizes the fact that one may lose the fruits of those years of honest labor by being placed in a hostile and prejudicial atmosphere by the evidence permissible under a drag net type of indictment and subjected to vicious inferences.

⁵ The body of the letter is as follows:

"In re: *U. S. v. Edward Wroblewski, et al.*, Hammond Criminal 1015.

"DEAR SIR:

"Inclosed please find copy of indictment in above captioned matter.

"This being a Hammond Division case, it will be up for trial during the Hammond sitting of the Federal Court which will begin on November 9.

"If there is any other information you desire it will be agreeably furnished." (Exhibit 137 Orig.)

There was no evidence that this petitioner conspired with anyone to defraud the United States of the conscientious services of Glasser or anyone else, on the contrary the evidence vindicates him.

Conclusion.

WHEREFORE, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

ALFRED E. ROTH,
Pro se.

March 27, 1941.

(3422)

SEP 19

RECEIVED

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

No. 32

ALFRED E. ROTH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE PETITIONER.

ALFRED E. ROTH,
10 N. Clark St.,
Chicago, Ill.
Pro se.

INDEX

SUBJECT INDEX

	PAGE
Opinion below	1
Jurisdiction	1
Questions presented	2
Constitutional and statutory provisions involved.....	3
Statement of case	4
Specifications of errors to be urged.....	17
Summary of argument	18
Argument:	
I. The jury was packed by the illegal delegation of their duties by the clerk and jury commissioner, which violated the petitioner's right to a fair and impartial trial.....	22
II. The acts and conduct of the trial judge prejudiced the petitioner's right to a fair and impartial trial	
(a) Cross examining petitioner in a manner and making remarks injurious to petitioner's credibility and defense.....	25
(b) Examining witnesses in a manner and making remarks favorable to the prosecution and prejudicial to the accused.....	27
(c) In making statements of alleged fact based on his personal knowledge.....	34
(d) Limiting the right of cross-examination to show bias, reward by and the coercive effect of Government officers.....	35

Argument (continued):

(e) In admitting in evidence Government agents' reports containing the criminal history of a co-defendant and ex parte statements tending to involve the co-defendant in a violation of the law.....	38
III. The prosecutor throughout the trial was guilty of misconduct and violated the rights of the petitioner to a fair and impartial trial.....	40
IV. There was no evidence to support the verdict against the petitioner	50
V. To constitute a valid indictment for an infamous crime in a federal court, it must have been publicly presented in open court, the grand jurors present answering to their names, the indictment then being delivered by the foreman to the court and the fact entered in the record	56
VI. (a) The indictment is vague, indefinite and uncertain and states the conclusions of the pleader, thereby failing to inform the petitioner of the nature and cause of the accusation	59
(b) The indictment charges a conspiracy to commit a substantive offense involving a concert of action and therefore the charge of conspiracy will not lie	65
VII. The appointment by the trial court of counsel for one defendant to also represent a co-defendant having adverse interests was a denial of the Constitutional right of effective assistance of counsel	66
VIII. The grand jury was illegally constituted because of the deliberate exclusion of women from the jury box from which the grand jurors were selected	67

Conclusion	71
Appendix :	
Constitutional provisions involved	73
Statutes involved	73

CITATIONS

Cases :

Adler v. United States, 182 Fed. 464.....	30, 40
Alford v. United States, 282 U. S. 687.....	36
Anderson v. United States, 260 Fed. 557.....	63
Angle v. United States, 172 Fed. 658.....	59
Asgill v. United States, 60 F. 2d 776.....	37
Berger v. United States, 295 U. S. 78.....	40, 43, 50
Brady v. United States, 39 F. 2d 872.....	39
Bratton v. United States, 73 F. 2d 795.....	63
Browne v. United States, 145 Fed. 1.....	66
Carroll v. United States, 257 U. S. 132.....	14
Collenger v. United States, 50 F. 2d 345.....	37
Cossack v. United States, 63 F. 2d 511.....	37
Crain v. United States, 162 U. S. 625.....	58
Crowley v. United States, 194 U. S. 461.....	69, 70
Dist. of Co. v. Clawans, 300 U. S. 617.....	38
Dowdy v. United States, 46 F. 2d 417.....	55
Dunn v. United States, 238 Fed. 554.....	23
Ex Parte Bain, 121 U. S. 1.....	58
Farkas v. United States, 2 F. 2d 644.....	36
Felker v. State, 54 Ark. 489.....	59
Frantz v. United States, 62 F. 2d 737.....	35, 40
Gambino v. United States, 275 U. S. 310.....	14
Gibaldi v. United States, 287 U. S. 112.....	66
Go Bart v. United States, 282 U. S. 345.....	14
Grau v. United States, 287 U. S. 124.....	14

CITATIONS

Cases (continued):

Heard v. United States, 255 Fed. 829.....	37
Hoypt v. Utah, 110 U. S. 574.....	69
Hunter v. United States, 62 F. 2d 217.....	40
Husty v. United States, 282 U. S. 697.....	14
In re Petitioner for Special Grand Jury, 50 F. 2d 973	23
Kelly v. The People, 39 Ill. 157.....	59
King v. United States, 112 Fed. 988.....	37
Linde v. United States, 13 F. 2d 259.....	55
Logan v. United States, 144 U. S. 263.....	39, 67
McKenna v. United States, 127 Fed. 88.....	63
Minner v. United States, 57 F. 2d 506.....	37
Nathanson v. United States, 290 U. S. 41.....	14
Nardone v. United States, 308 U. S. 338.....	14
Neal v. Delaware, 103 U. S. 370.....	23
Norris v. Alabama, 294 U. S. 587.....	24
Ogden v. United States, 112 Fed. 523.....	23
People v. Clempitt, 362 Ill. 534.....	70
People v. Fudge, 342 Ill. 574.....	70
People v. Lindquist, 289 Ill. App. 250.....	70
People v. Mack, 367 Ill. 481.....	70
People v. Mankus, 292 Ill. 435.....	70
People v. Schraeberg, 347 Ill. 392.....	70
People v. Traeger, 372 Ill. 11.....	68
Pettibone v. United States, 148 U. S. 197.....	65
Pharr v. United States 148 U. S. 197.....	39, 47
Pierre v. State of Louisiana, 306 U. S. 354.....	24
Pointer v. State of Louisiana, 151 U. S. 396.....	70
Quercia v. State of Louisiana, 289 U. S. 466.....	26, 35
Rainey v. The People, 8 Ill. (3 Gil.) 71.....	59
Renigar v. United States, 172 Fed. 646.....	59, 69

CITATIONS

Cases (continued):

Serrells v. United States, 287 U. S. 435.....	14
Smith v. State of Texas, 61 S. Ct. 164.....	24
State v. Cantrell, 21 Ark. 127.....	69
State v. Heaton, 23 W. Va. 773.....	59
Symmonette v. United States, 47 F. 2d 686.....	55
Taylor v. United States, 286 U. S. 1.....	14
Torrell v. United States, 6 F. 2d 498.....	35
Tynan v. United States, 297 Fed. 177.....	70
United States v. Britton, 108 U. S. 205.....	65
United States v. Cruikshank, 92 U. S. 542.....	59
United States v. Dietrich, 126 Fed. 664.....	66
United States v. Dressler, 112 Fed. 972.....	39
United States v. Falcone, 61 C. Ct. 204.....	14
United States v. Gale, 109 U. S. 65.....	69
United States v. Hagan, 27 F. Supp. 214.....	66
United States v. Hess, 124 U. S. 483.....	65
United States v. Lefkowitz, 285 U. S. 452.....	14
United States v. Lewis, 192 Fed. 663.....	69
United States v. Murphy, 224 Fed. 554.....	23
United States v. N. Y. C. & H. R. R. Co., 146 Fed. 298	66
United States v. Perlstein, 120 F. 2d 276.....	42
United States v. Ross, 92 U. S. 281.....	55
United States v. Sager, 49 F. 2d 725.....	66
Walker v. United States, 93 F. 2d 383.....	23
Williams v. United States, 93 F. 2d 685.....	35, 40
Yundt v. The People, 65 Ill. 373.....	59

United States Constitution:

Fifth Amendment	58
Sixth Amendment	24, 60

CITATIONS

Statutes:

Illinois Rev. Stats. (1939), c. 78:

Sec. 1 68

Sec. 25 68

U. S. C.:

Title 18:

Sec. 88 (Criminal Code, sec. 37)..... 61

Sec. 91 (Criminal Code, sec. 39)..... 65

Title 28:

Sec. 152 (Judicial Code, sec. 79)..... 56

Sec. 411 (Judicial Code, sec. 275)..... 69

Sec. 412 (Judicial Code, sec. 276)..... 68

*Texts and Miscellaneous:*Bulletin of the registrar of the Department of
Justice 39th Edition 1938 13

Criminal Appeals Rules, Rule XI 1

Gov. Br. in opp. to pet. for cert. p. 26..... 61

Gov. Br. United States v. Roth, No. 7317 C. C. A.
7th, P. 26..... 60Rule 30, District Court for the Northern District
of Illinois 57

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

No. 32

ALFRED E. ROTH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE PETITIONER.

Opinion Below.

The opinion of the Circuit Court of Appeals (R. 1117-1139) is reported on 116 F. 2d 690.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on December 13, 1940 (R. 1140). Petitioner filed a petition for rehearing which was denied January 23, 1941 (R. 1239). The petition for a writ of certiorari was filed February 27, 1941 and was granted April 7, 1941. The jurisdiction of this court is invoked under section 347 (a)

of Title 28, United States Code. (Judicial Code, Section 240 (a) as amended by the Act of February 13, 1925.) See also Rule XI of the Criminal Appeals Rules, promulgated by this court on May 7, 1934.

Questions Presented.

The petitioner contends that he has been tried before a packed jury, deprived of a fair trial by the improper and prejudicial conduct of both the judge and prosecutor, and convicted without evidence on a fatally defective indictment which was not returned in open court by a legally constituted grand jury.

On these allegations the following questions are presented.

1. Whether the limitation of female jurors to a particular civic group who attended jury classes where lectures presented the views of the prosecution, to the total and systematic exclusion of all others was a denial of the constitutional right of trial by an impartial jury.

2. Whether the action and conduct of the trial judge did not deprive the petitioner of a fair and impartial trial and of the benefit of the presumption of innocence.

3. Whether the misconduct of the prosecuting attorney permitted and condoned by the trial judge, was such a deviation from the usual trial procedure and so prejudicial to the petitioner as to have deprived him of a fair and impartial trial.

4. Whether the petitioner was properly put to trial on an indictment which had not been returned by a grand jury in open court.

5. Whether the evidence is so utterly insufficient to establish the guilt of the petitioner as to require a reversal of the judgment.

6. Whether the alleged indictment upon which petitioner was tried (a) charged a violation of any laws of the United States, and (b) whether it was sufficiently certain and definite to inform the petitioner of the charge.

7. Whether the appointment by the court of the previously retained counsel of one defendant, over his objection on the ground of adverse and conflicting interests, to act also as counsel for a co-defendant so affects an effective representation of counsel for both the defendants as to result in prejudice to all defendants.

8. Whether a federal grand jury was illegally constituted and void because the jury commissioner and clerk of the district court intentionally totally excluded the female sex from the jury box from which the grand jurors were drawn, the state law making it mandatory that females be placed on jury lists.

Constitutional and Statutory Provisions Involved.

The constitutional and statutory provisions involved are:

The Fifth Amendment to the United States Constitution.

The Sixth Amendment to the United States Constitution.

U.S.C. Title 18, sec. 88 (Criminal Code, sec. 37).

U.S.C. Title 18, sec. 91 (Criminal Code, sec. 39).

U.S.C. Title 28, sec. 411 (Judicial Code, sec. 275).

U.S.C. Title 28, sec. 412 (Judicial Code, sec. 276).

Illinois Rev. Stats. (1939) C. 78, Sec. 1.

Illinois Rev. Stats. (1939) C. 78, Sec. 25.

They appear in the appendix, pp. 73-76.

Statement of the Case.

The petitioner is engaged in the private practice of law, specializing in federal practice (R. 833). Many lawyers referred federal matters to the petitioner (R. 749, 796, 889, 890, 783). Kretske, a co-defendant and petitioner in No. 31, while engaged in the private practice of law, referred several federal matters to the petitioner for trial (R. 805). Glasser, a co-defendant and petitioner in No. 30, was an assistant United States Attorney for the Northern District of Illinois from March, 1935 to June 1939 (R. 186-187). He was in charge of prosecution of all liquor violation cases at Chicago (R. 188) and as such was the adversary of the petitioner in several cases.

There arose a sharp diversity as to policy between the office of the District Attorney and the local Alcohol Tax Unit, who would bring in petty offenders and not the big fellow (R. 719, 891), which culminated in contempt proceedings against Yellowley,¹ District Supervisor for the Alcohol Tax Unit (R. 1031), who, after his appearance before the April, 1937 Grand Jury, solicited the foreman thereof to come to his hotel room (R. 946).²

It is not denied that, subsequently, Yellowley threatened Glasser, the Assistant District Attorney, with the statement (R. 948):

“Mr. Glasser, I will get you if it is the last thing I ever do.”

¹ Offer of proof of this petition and answer was denied (R. 1031-1034).

² This jury made a report emphatic in its criticism of the policy and conduct of the Alcohol Tax Unit above referred to (R. 789-795). Offer of proof of this report was denied (R. 795).

Upon the elevation of District Attorney Igoe to the federal bench a new district attorney was appointed and Glasser, among a number of other assistants, resigned.

On September 29, 1939, an indictment was filed against the petitioner and four others containing two counts, the first of which was dismissed (R. 38, 715).

At the time of the discharge of the September 1939 Grand Jury on September 29, 1939, there was no record of the return of any indictment against this petitioner. Motion to quash on this ground was denied (R. 42).

In selecting the September, 1939 Grand Jury, the jury commissioner and the clerk of the district court deliberately totally excluded the female sex, although the Illinois State Law made it mandatory that females be placed on jury lists. Motion to quash on this ground was also denied (R. 42).

The second count of the indictment, in substance, charged the petitioner and others with conspiracy to defraud the United States of the conscientious services of an Assistant United States Attorney in the Northern District of Illinois by promising, offering, causing and procuring to be promised and offered, money and other things of value to an officer of the United States with intent to influence his decision and action on certain cases which were at times brought before him in his official capacity (R. 22-28). A demurrer was interposed on the grounds that the indictment failed to charge any violation of law and that it was not sufficiently certain and definite to inform the petitioner of the charge (R. 42). The trial judge, in overruling the demurrer (R. 160) stated: "• • • the indictment is somewhat vague and indefinite" and that the defendants were entitled to a bill of particulars— "• • • that they know definitely and in particular just exactly what they are charged with" (R. 160).

The underlying theory of the Government's case is very vague (R. 154-155, 160). As stated by the District Attorney it was that "There was a conspiracy on foot to solicit persons to make promises" (R. 154). Although the Government was ordered to file a bill of particulars naming the persons who made solicitations and what persons were solicited and on what dates, and at what places and what amounts, it is significant that the name of this petitioner is not even mentioned in the entire 12 pages of the bill of particulars (R. 77-89) nor is there any inference therein of any wrongful act on the part of this petitioner.

The record clearly shows that the petitioner did not represent any client in any criminal case until after the institution of a prosecution and the defendants apprehended, and, in the libels (civil cases) after forfeiture proceedings were begun. Neither any client nor any other person testified that the petitioner directly or indirectly solicited any person or made any promises to any person other than that he would handle the cases of his clients on the merits to the best of his ability.

The proof by the Government merely showed that the petitioner acted as trial counsel in a few cases four of which were referred to him by Attorney Kretske (R. 874, 230, 861, 868):

One of the four cases Kretske referred to the petitioner was a libel case involving a Chrysler sedan (R. 874). The case was tried before District Judge Barnes on the Alcohol Tax Unit Agent's report, Glasser opposing, and the automobile was ordered returned to the claimant. Judge Barnes testified that the agent's statement was not sufficient to forfeit the car and stated: " * * * I had no more right to take it than I had to take yours" (R. 718).

Another one of the four cases referred to the petitioner by Attorney Kretske involved a still at 6949 Stony Island

Avenue, Chicago. The case was prepared for hearing by the petitioner with the aid of the defendants and all appeared before Commissioner Walker, ready to proceed. Glasser, opposing, moved for three weeks continuance. United States Commissioner Walker testified "He (the petitioner) was vigorous and was certainly very earnest in opposing a continuance" (R. 295), which was granted.

An indictment was obtained in that case before the adjourned hearing date to which indictment all defendants when called for arraignment, entered pleas of not guilty and the case was set for trial on May 5, 1938 (R. 836). On May 2, the defendants prepared for trial in the office of the petitioner, at which time statements of their proposed testimony were dictated to the petitioner's stenographer, Frances Bornhorst (R. 830) and written in her short-hand notebook (Exhibit 185, R. 831) and transcribed (Exhibits 182, 183 and 184, R. 831). Petitioner, with the aid of the defendants, also prepared a sketch (Exhibit 38, R. 836, 837), of the vicinity of 69th and Stony Island Avenue, to assist him in trying the case. Two of the defendants in that case, when called by the Government as witnesses in the instant case, testified that they were innocent of the charges involved in their own case,—that they got a lawyer to bring out the facts in their own case, and were prepared to take the stand before Judge Woodward (before whom their own case was set for trial) and to so testify therein (R. 272, 347). The third defendant therein also claimed he had nothing to do with the still and was going to so testify before Judge Woodward (R. 235) but on the trial of the instant case he testified that he had admitted his guilt to agent Bailey about September 1939 (R. 236).

When the petitioner and his clients appeared on the trial date, May 2, 1938, ready for trial in that "still" case, they learned that the case had been stricken a week prior thereto, with leave to reinstate, without notice to either clients or their counsel (R. 235-236).

The uncontradicted testimony is that the case was stricken with leave to reinstate by Glasser at the direction of the investigator in charge of the alcohol tax unit, who advised Glasser they did not have sufficient evidence to convict (R. 918-920).

Corroboration of Glasser's testimony that the case was stricken with leave to reinstate, at the request of the agent in charge, because of the weakness of the evidence, is furnished by the fact that the record discloses the case as never having been reinstated (Exhibit 226, R. 1034).

The third case referred to the petitioner by Attorney Kretske was one involving Edward Dewes who was one of several defendants jointly indicted (R. 547, 568). Petitioner prepared the case for trial, together with Dewes his co-defendants and their lawyers (R. 764). Numerous continuances were had in this case due to the illness of Daniel Anderson who was representing one of the co-defendants, Victor Raubunas, therein (R. 823). That case was tried after Glasser resigned.

In the fourth case referred by Attorney Kretske, the petitioner represented one Harry Dukatt in a hearing before the United States Commissioner, where he was discharged (R. 701). Subsequently Dukatt was indicted in two cases and entered a plea of guilty to both indictments, being represented by the petitioner, and was sentenced to the penitentiary for a period of two years (R. 700-701).

The petitioner was engaged by Frank Hodorowicz to represent him and three co-defendants in connection with an alcohol tax violation. While attorney for the defendants, the petitioner conferred with Glasser as to his attitude on a plea of guilty and was advised that it was that of a substantial penitentiary sentence (R. 858). The petitioner informed his clients of Glasser's attitude (R. 859). On the trial on their plea of not guilty, Frank Hodorowicz and

his co-defendants were represented by another lawyer (R. 859). All the defendants were convicted, Glasser prosecuting (R. 312).

The petitioner represented one Paul Svec in the defense of two criminal cases, Glasser prosecuting. On the trial of the first case Svec was convicted and sentenced to a two year term of imprisonment and fined \$500.00 on October 4, 1938 (R. 557). While he was at large on an appeal bond, on December 9, 1938, agents under Yellowley arrested him in connection with an illicit still on Wells Street in Chicago. He was then taken to their office, there furnished with Glasser's unlisted telephone number and told to call Glasser and have him guarantee to the agent payment of money to them (R. 584-585, 932-933). This attempt at entrapment failed and was fully disclosed by the prompt action of Glasser in secreting an agent of the Federal Bureau of Investigation in his office where the agent overheard a conversation with Svec in which the latter confessed and said (R. 565):

"The agents told me they would let me go if I did the telephoning" (See R. 583-585, 932-935).

Svec denied any connection with the Wells Street still (R. 558) and stated that he had never before tried to fix his cases (R. 566, 584). He further stated that the petitioner would not permit him to sign any statement for Glasser (R. 564). After a full hearing on the second case, Svec was discharged (R. 568). Thereafter his conviction on the first case was affirmed by the Seventh Circuit Court of Appeals and he was committed to the penitentiary to serve his sentence (R. 556, 557).

United States v. About 151.682 acres of land, etc. was gone into by the Government on cross-examination of the petitioner. The case involved a libel of a farm and personal property and was referred to the petitioner by

Attorney Sydney Baker (R. 749) to prosecute an appeal after the Government had been victorious in the District Court, Glasser representing the Government. The judgment of the lower court was reversed 99 F. 2d 716. The petitioner represented one of the claimants in the case who was indicted while the civil case was pending on appeal (R. 868, 869) and was thereafter substituted by another lawyer who disposed of the criminal case (R. 880-881).

In the instant case the alleged indictment limited the alleged conspiracy to cases in the Northern District of Illinois (R. 28). Nevertheless, the Government over the objection of the petitioner (R. 98, 680) introduced evidence through one Alexander Campbell concerning a case in the Northern District of Indiana in which the petitioner was defense counsel (R. 680). In connection therewith, Campbell testified that on September 30, 1938, at Ft. Wayne, Indiana, the petitioner attempted to prevent the return of the indictment of Edward and William Wroblewski whereas the indictment had been returned four months prior thereto, on April 25, 1938 (Exhibit 186-A, 186-B, 186-C, R. 840).

William Wroblewski, one of the two brothers named as defendants therein, called as a Government witness testified that he was informed of the Indiana conspiracy indictment in April 1938 and told to arrange bail (R. 635). The other brother Edward, also a Government witness, testified that he first met and hired petitioner when he was preparing his case for trial, in Indiana in September 1938 (R. 676-677).

Petitioner had knowledge of the indictment in Indiana before he talked to Campbell, as the petitioner had at Chicago examined the United States Commissioner's removal file (Exhibit 186, R. 840) and a certified copy of the Indiana indictment (Exhibit 186-A, R. 840) after he was

engaged in September 1938 and before he went to Indiana (R. 836-840).

In the instant case the petitioner testified to the conversation he had with Campbell on September 30, 1938, wherein the petitioner requested a copy of the Wroblewski indictment and asked to be advised when to appear in court (R. 842). A letter from and signed by Campbell, dated October 7, 1938 was received by the petitioner complying with his request (R. 842).³

Petitioner also testified that during the September 30, 1939 conversation he complained to Campbell because of the indictment of the defendants in Indiana after they had been dealt with for the same acts and conduct a year prior thereto (R. 840, 842, 846), and stated that "We don't do things like that in Chicago" (R. 842).

The obvious confusion of Campbell as to the September 30, 1938 conversation is further emphasized by his erroneous account of the conversation of July 10, 1939 wherein he stated the petitioner asked him whether or not the sentence in the Northern District of Indiana would run concurrently with the sentence in the Southern District case (R. 684). The implication being that petitioner tried to work out a concurrent sentence. As a matter of fact, the petitioner called on Campbell on July 10, 1939 to see that the commitment as to Edward Wroblewski issued promptly to insure the serving of the two sentences concurrently

³ The body of the letter is as follows:

"*In re: U. S. v. Edward Wroblewski, et al.*, Hammond Criminal 1015.

"Dear Sir:

"Inclosed please find copy of indictment in above captioned matter.

"This being a Hammond Division case, it will be up for trial during the Hammond sitting of the Federal Court which will begin on November 9.

"If there is any other information you desire it will be agreeably furnished" (Exhibit 137, Orig. R. 842).

(R. 848) which was so ordered by Judge Baltzell more than two months prior thereto. Corroborative of the petitioner's statement that he did not ask Campbell to work out a concurrent sentence and that the petitioner advised Campbell of the entry of Judge Baltzell's order and petitioner's suggestion that he confirm it, is the letter received by the petitioner from and signed by Campbell dated July 15, 1939.⁴

The insistence of the trial judge upon a conviction is best displayed by the caustic remark, made in the presence of the jury during the cross-examination of the petitioner when the judge exclaimed, "He (meaning the petitioner) has a lot of last answers." (R. 878) thereby indicating a disbelief and conflict in the testimony of the petitioner when in fact no conflict in his testimony existed (R. 833-884).

In similar vein, the trial judge interrupted the cross-examination of the petitioner and when he could not exactly fix a certain time, remarked, "Well, why don't you say so?" (R. 877). Again during cross examination when the petitioner was asked if he had a certain conversation with Mr. Bailey, to which the petitioner replied he would not know, the trial judge remarked, "Well, just say so then" (R. 877). The three preceding remarks very closely

⁴ The body of the letter is as follows:

"Dear Sir:— *In re U. S. v. Edward Wroblewski*

Please be advised that Mr. Albert C. Sogemeier, Clerk of the U. S. District Court for the Southern District of Indiana, advises that on April 29, 1939 the above named defendant changed his plea to guilty and on May 5, 1939 was sentenced to eighteen months, said sentence to be served in the U. S. Northeastern Penitentiary, Lewisburg, Pennsylvania: fined \$500.00 without costs, which said sentence was to run concurrent with the sentence in the Northern District of Indiana" (Exhibit 135, Orig. R. 849).

followed each other, appearing within two successive pages of testimony.

Again during the cross-examination of the petitioner, when counsel for the petitioner complained of the shouting of the prosecutor and stated that the prosecutor did not yell when he cross-examined the Judge (having reference to District Judge Woodward) the trial judge remarked, "Mr. McGreal is not cross-examining a judge" (R. 863), indicating that the petitioner was not entitled to the same consideration as other witnesses and thus detracted from the weight of his testimony.

The trial judge prejudicially limited the right of cross-examination. Government witness Swanson was under indictment in the federal courts in Illinois and Ohio. In order to develop a possible biased state of mind and to show that the witness was under the influence and in fear of government agent Bailey, Swanson was asked if Bailey could not get the indictment in Ohio called up for trial (R. 237). The reluctance of the witness to answer the question is not disclosed by the record because of the belated objection of the prosecutor (R. 237). Immediately upon the prosecutor voicing his objection, the trial judge remarked, "That is entirely out of order. Mr. Bailey is not running the courts down in Cleveland" (R. 237).

Cross-examination was again prejudicially limited when the trial judge refused to permit an inquiry as to favoritism shown to a Government witness, a convict who had been transferred from a penitentiary where he was serving his sentence, to a reformatory at Milan, Michigan. In sustaining the prosecutor's objection, the trial judge stated, "They are both Federal Penitentiaries" (R. 555).⁵

⁵ The institution at Milan, Michigan is a "Federal Correctional Institution," and not a penitentiary. See Bulletin of the registrar of the Department of Justice in the courts of the United States, 39th Edition, 1938, issued by Department of Justice, Washington, D. C.

The trial judge made statements of fact, based on his own personal knowledge, as to one Nick Abosketes, a Government witness in the instant case (R. 941, 943, 1030).

The trial judge during the cross-examination of Attorney Kretske, implied impropriety and irregularity in the reference of cases by Kretske to the petitioner, by stating that there was nothing difficult about the trial of alcohol cases (R. 816).^{*}

During the cross-examination of a Government witness, also formerly represented by petitioner, in spite of the showing in the record that the indictment against the witness was still pending (R. 236-238, 317, 918-921, 837)—the case had been merely struck from the docket with leave to reinstate—the trial judge summed up and repeated some of the contentions of the Government, as if those contentions were conclusive against the petitioner, by asking the witness the question (R. 346) “You were never convicted, never paid a fine, never went to jail?” Although the question was truthfully answered in the negative, the prejudice is obvious. In examining another Government witness also formerly represented by petitioner and accused in the same pending indictment, the trial judge stated in a declarative question (R. 232) “The case just dropped out of mid air?” This question also required an answer in the negative which was equally prejudicial. In spite of the fact that the record clearly showed that the only time that case was ever called in court was before Judge Woodward for

^{*} This Court has considered many questions raised in alcohol cases sufficiently important to grant certiorari. A few of the cases are noted, viz., *United States v. Falcone*, 61 S. Ct. 204; *Nardone v. United States*, 308 U. S. 338; *Nathanson v. United States*, 290 U. S. 41; *Sorrells v. United States*, 287 U. S. 435; *Grau v. United States*, 287 U. S. 124; *Taylor v. United States*, 286 U. S. 1; *United States v. Lefkowitz*, 285 U. S. 452; *Husty v. United States*, 282 U. S. 697; *Go Bart v. United States*, 282 U. S. 345; *Gambino v. United States*, 275 U. S. 310; *Carroll v. United States*, 267 U. S. 132.

arraignment and plea and to set for trial (R. 235-236), in the course of the examination of another Government witness, formerly represented by petitioner and accused in the same indictment, the trial judge persisted in treating an arraignment as though it had been a trial (R. 237-348). His questioning led the jury to believe that it was incumbent to disclose facts in the case on an arraignment (R. 347-348) which of course is not permissible.

Again, after District Judge Barnes testified in the Chrysler sedan case that the case was tried on the agent's statement, as is frequently done (R. 717-718), and after the petitioner had also testified on cross-examination that the case was tried on the agent's report (R. 838), the trial court asked the petitioner the following question: "Was any witness sworn or testimony taken?" This question necessarily compelled an answer of "No," (R. 873) and deprived the petitioner of the benefit of Judge Barnes' testimony and tended to imply that because no witness was sworn or testimony taken, some irregularity existed in the manner in which the case was tried.

The rulings of the trial judge on admissibility of evidence were arbitrary and the result of bias in admitting in evidence Exhibits No. 81 and 113 (R. 529, 532) containing the summary of conversations between Government agents and third persons not parties to or witnesses in the instant case, and the proposed testimony of witnesses allegedly tending to implicate the co-defendant Kaplan in sundry violations of law, and also describing his racial descent and stating that he was reputed to be a bootlegger worth \$200,000.00, and that he was arrested in connection with a killing and that he was sentenced to pay a fine for violation of the National Prohibition Act.

Gross abuse of his position by the trial judge appears throughout the record, and will be more fully discussed under point II. in the argument.

The prosecutor throughout the trial violated the right of the petitioner by misstating facts to the court (R. 219); changing cross examiners and reexamining on matters once covered (R. 882); putting words in the mouth of a witness (R. 636); misleading the jury with unfounded inferences (R. 883, 289); refusing to permit a defendant to examine exhibits in the prosecutor's possession for the purpose of refreshing defendant's recollection notwithstanding the order of court to that effect (R. 980-982); asking improper questions and conducting insidious cross-examination (R. 908, 989-991, 954). A detailed discussion of the misconduct of the prosecution appears in point III. of the argument.

The trial was a long one, consuming about twenty-six days. The record is voluminous and the exhibits equally so, consisting of grand jury records, court files, district attorney's files, agents' reports, criminal and civil pleadings and a mass of other material.

It is clear that the trial was so colored by constant errors that the petitioner was tried in an atmosphere fatal to the proper administration of justice.

All the defendants were found guilty. Petitioner filed a motion for a new trial and in arrest of judgment (R. 1046). Among other grounds in support of same, was one supported by uncontradicted affidavits to the effect that by reason of total and systematic exclusion of persons otherwise qualified he did not have a trial jury free from bias, prejudice and prior instruction (R. 1049-1051). The motions were denied and exceptions were noted (R. 103, 1060). Petitioner was sentenced to pay a fine of \$500.00 (R. 104). The Circuit Court of Appeals affirmed (R. 1130-1140).

Specification of Errors to Be Urged.

The Circuit Court of Appeals erred:

1. In holding that the trial court did not abuse its discretion in denying petitioner's motion for a new trial based on uncontradicted affidavits affirmatively showing and offering to prove the total and systematic exclusion from the jury list, from which the petit jury was picked, of females who were not members of a private league of women voters and who had not, as members of the league, attended jury classes maintained for the purpose of giving instruction, which exclusion denied the petitioner the constitutional right of trial by a fair and impartial jury.

2. In holding that the acts and conduct of the trial judge did not deprive the petitioner of the presumption of innocence and prejudice his right to a fair and impartial constitutional trial.

3. In holding that the misconduct of the prosecuting attorney, permitted and sanctioned by the trial judge, did not require reversal of the judgment.

4. In failing to hold that there was no evidence to support the judgment and that therefore a reversal of the judgment was required.

5. In holding that the record shows that the indictment was returned in open court by a grand jury.

6. In holding that the indictment properly charged an offense, and was sufficiently certain and definite to inform the petitioner of the charge.

7. In holding that the appointment of the defendant Glasser's counsel, over his objection on the ground of adverse and conflicting interests, to act also as counsel for co-defendant Kretske, did not impair the right to have

effective assistance of counsel, to the prejudice of all defendants.

8. In failing to hold that the jury commissioner and the clerk of the district court violated the laws of the State of Illinois and of the United States in deliberately excluding females in the selection of the grand jury and that consequently the grand jury was illegally constituted.

SUMMARY OF ARGUMENT.

I.

The clerk and jury commissioner illegally delegated their duties to select jurors by permitting a private organization to submit to them for placing into the jury box a list of women who were members of a private organization and had attended jury classes where lectures presented the views of the prosecution. This was a complete abdication of the function of the jury commissioner and clerk of the court in the selection of the jury list to be placed in the jury box. This resulted in the petitioner being tried by a packed jury which was limited to a particular group thereby depriving the petitioner of a trial by a fair and impartial jury.

II.

The petitioner was deprived of a fair and impartial trial by the acts and conduct of the trial judge in cross-examining petitioner in a manner and making remarks injurious to petitioner's credibility and defense; by examining witnesses in a manner and making remarks favorable to the prosecution and prejudicial to the accused; by making statements of alleged facts based on his personal knowledge; by limiting the right of cross-examination to show bias, reward by and the coercive effect of Govern-

ment officers; by admitting in evidence Government agents' reports containing the criminal history of a co-defendant and *ex parte* statements tending to involve the co-defendant in a violation of the law.

III.

The prosecuting attorneys throughout the trial by their misconduct, permitted and condoned by the trial judge violated the petitioner's right to a fair trial by misstating facts to the court; changing cross-examiners and re-examining on matters once covered; by putting words in the mouths of witnesses; by misleading the jury with unfounded inferences; by refusing to permit a defendant to examine exhibits in the prosecutor's possession for the purpose of refreshing the defendant's recollection notwithstanding the order of court to that effect; and by asking improper questions and conducting insidious cross-examination.

IV.

There was no evidence to support the verdict against the petitioner which merely showed that the petitioner who specialized in federal practice, appeared as defense counsel with Glasser as his adversary in the trial of alcohol cases some of which were referred to the petitioner for trial by other lawyers. The petitioner contends that the verdict is based on unfounded inferences and suspicion brought about by the misconduct of the judge and prosecutor. No inference of guilt can be drawn from the mere fact that attorney Kretske referred a few cases to the petitioner to be tried. It is seriously contended that this is the only reason the petitioner was made a defendant in this case. He was a necessary victim in a plot to "get" Glasser.

V.

There is no affirmative showing in the record that the indictment was returned in open court by a grand jury and since such a showing is jurisdictional the judgment is void. The endorsements on the indictment "filed in open court" on a certain date does not meet the legal requirements that it was returned in open court.

VI.

The charging part of the indictment is in the most general terms. It attempts to charge generally in a drag net style a conspiracy to defraud the United States of the conscientious services of a United States attorney or an assistant United States attorney in certain questions, matters, causes and proceedings but does not name the United States attorney or the assistant. It does not particularize the fraud or describe the acts constituting fraud or particularize the certain questions, matters, causes and proceedings. The indictment is fatally defective because it is vague, indefinite and uncertain.

It also attempts to charge a conspiracy to commit the substance offense of bribery of a United States officer almost word for word in the language of Title 18 U. S. C. sec. 91, an offense necessarily involving concerted action and therefore the charge of conspiracy will not lie.

VII.

The appointment by the trial court of Glasser's counsel over his objection on the ground of adverse interests to also represent co-defendant Kretske was a denial of effective assistance of counsel and since this is a conspiracy case the error complained of is available to the petitioner.

VIII.

The Illinois law effective July 1, 1939 made it mandatory to include women on jury service. The clerk of the court and jury commissioner deliberately excluded females from federal jury service when drawing the September 1939 grand jury. The federal statutes provide that jurors in the courts of the United States shall have the same qualifications as in the highest courts of law in the respective states when summoned for service in the courts of the United States, and since the September 1939 grand jury was summoned subsequent to the time the law became effective in Illinois making it mandatory to place females on juries, the September 1939 grand jury was illegally constituted and void.

ARGUMENT.

I.

The jury was packed by the illegal delegation of the duties by the clerk and jury commissioner, which violated the petitioner's right to a fair and impartial trial.

Affidavits (R. 1049-1051, 1057) filed (R. 1046) in support of the motion for a new trial, state that all the females placed in the box from which the petit jury in this cause was drawn were presented to the clerk of the court, who is one of the jury commissioners, by the Illinois League of Women Voters; that the list had been previously prepared by said league of women voters; that the females otherwise qualified and eligible for jury service were deliberately excluded from the box; that the females selected by said league had attended jury classes maintained for the purpose of giving instructions to potential jurors; that lectures before the jury classes presented the views of the prosecution; that females empanelled to try the petitioner were selected from said list; that knowledge of the above was acquired after verdict. It is to be especially noted that the affidavit of Glasser affirmatively states facts showing prejudice, viz., that all the women whose names were presented "had attended jury classes where lectures presented views of the prosecution" (R. 1050-1051).

The foregoing was formally brought to the attention of the trial judge at the earliest possible moment the facts became known to the petitioner in support of the motion for a new trial and arrest of judgment (R. 1046). An offer of proof was contained in Glasser's affidavit (R. 1051).

Since the allegations in the affidavits were in no way controverted either by counter-affidavit or even by a formal denial of grounds assigned, they were to be accepted as true for the purpose of the motion, *Neal v. Delaware*, 103 U. S. 370, 395-396; *Ogden v. United States*, 112 Fed. 523, 526-527. (C.C.A. 3).

By statute, at least 300 names are required to be placed in the jury box from which a venire is drawn; and those names are required to be selected by the clerk and a jury commissioner. Judicial Code, sec. 276, 28 U. S. C. sec. 412 (Appendix p. 75); *United States v. Murphy*, 224 Fed. 554, 562. (D. C., N. Y.).

Glasser's affidavit (R. 1050) states that of the 100-persons venire 47 were female and 53 were male. Since it is shown that the names of all females were presented by the Illinois League of Women Voters, it follows that, as to approximately one-half of the names placed in the jury box, selection was made not by the clerk or the jury commissioner but by a single unauthorized private organization. No other person or official has the right to participate in such selection. *Dunn v. United States*, 238 Fed. 508, 512 (C. C. A. 5); *United States v. Murphy*, 224 Fed. 554, 560, 561, 566 (D. C. N. Y.); *In re Petition for Special Grand Jury*, 50 F. 2d 973 (D. C. Pa.).

No degree of selectivity was exercised by the clerk and jury commissioner. It is clear that they completely abdicated their function in the selection of a jury list.

This is not a case that involves the mere solicitation by the clerk of information from varied sources preliminary to selection by the clerk, cf. *Walker v. United States*, 93 F. 2d 383, 390-391, cert. denied 303 U. S. 644. In the instant case, a group prepared and presented a list of names from their membership who had attended jury classes, all of which names were placed in the box (R. 1050, 1057).

The limitation of the body of citizenship from which female jurors were selected struck at the very fundamental right of trial by jury and so perverted that right so as to amount to no jury at all.

It is respectfully submitted that the right to a fair and impartial trial is a substantial right guaranteed by the Sixth Amendment of the United States Constitution and to deny such a right constitutes an abuse of discretion.

In *Norris v. Alabama*, 294 U. S. 587, this Court held that it was a denial of the equal protection of the laws, contrary to the Fourteenth Amendment to exclude all persons of the African race, solely because of their color, from serving as grand or petit jurors. In the instant case all females not members of a private league of women voters were excluded from petit jury service.

"It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community." *Smith v. Texas*, 61 S. Ct. 164, 165. The limitation of female jurors to a particular organization as in the instant case is not truly representative of the community.

"Indictment by grand jury and trial by jury, cease to harmonize with our traditional concepts of justice at the very moment particular groups, classes or races, otherwise qualified to serve as jurors in a community, are excluded as such from jury service." *Pierre v. State of Louisiana*, 306 U. S. 354, 358. In the instant case females as a class, not members of a private league of women voters were excluded from jury service.

It is respectfully submitted that the trial court abused its discretion in failing to grant the petitioner a new trial because of the packing of the jury, and that the Circuit Court of Appeals erred in holding that it did not abuse its discretion.

II.

The acts and conduct of the trial judge prejudiced the petitioner's right to a fair and impartial trial.

A defendant is entitled to a fair trial on the charges preferred against him. In order that our judicial system and practice be vindicated utmost care is required that no ruling or comment by the court take place which would have the effect of communicating to the jury an impression that the court was unfavorable to the defendant.

The gross abuse of his position by the trial judge appears throughout the record.

(a) Cross examining petitioner in a manner and making remarks injurious to petitioner's credibility and defense.

During the cross-examination of petitioner after he had answered a question put by the prosecutor, the trial judge remarked, "He, (meaning the petitioner) has a lot of last answers" (R. 878).

The remark coming as it did during the most vital part of petitioner's defense, while testifying in his own behalf, fatally deprived the petitioner of the benefit of his testimony by conveying to the jury the impression that the testimony of the petitioner was untrue.

The trial judge interrupted the cross-examination of the petitioner and when the petitioner could not exactly fix a certain time remarked, "Well why don't you say so" (R. 877).

Again during cross-examination when the petitioner was asked if he had a certain conversation with Mr. Bailey to which the petitioner replied he would not know, the judge

remarked, "Well, just say so then" (R. 877). The attitude of the trial judge is reflected in the above remarks and because of them the jury necessarily would indulge in adverse inferences and conclusions.

There is a burden upon the district attorney as a quasi judicial officer to aid and maintain the proper judicial atmosphere. Browbeating witnesses and argumentiveness has been condemned by this Court in *Berger v. United States*, 295 U. S. 78.

When counsel for petitioner objected to the prosecutor yelling at the witness the following occurred:

Mr. Poust: Mr. Roth is not deaf and neither are the jury. There is no cause for Mr. McGreal to yell at the witness.

The Court: That is his method of cross-examining. He may proceed.

Mr. Poust: I noticed when they cross-examined the Judge they did not yell.

The Court: Mr. McGreal is not cross-examining a Judge. I have observed Mr. McGreal's method of cross-examination and he may proceed (R. 863).

The remark of the trial judge, "Mr. McGreal is not cross-examining a Judge," created the inference that the petitioner was not entitled to the same consideration as other witnesses and detracted from the weight of his testimony.

"It is important that hostile comment by the Judge should not render vain the privilege of the accused to testify in his own behalf." *Quercia v. United States*, 289 U. S. 466, 470.

Glasser represented the Government in the trial of a civil case, *United States v. About 151 Acres of land, etc.*,

involving a libel to forfeit a farm and personal property as the result of a seizure of an illicit still. Attorney Baker represented the claimants (R. 749). The Government was victorious in the trial court and the petitioner was engaged to prosecute an appeal. On cross-examination of the petitioner concerning this case, the prosecutor inquired whether, or not, Glasser would be required to disclose all the evidence the Government had in the criminal case, arising out of the still seizure, while trying the civil case. The petitioner said that he did not know if Glasser had done this (R. 870). The trial judge then stated, "You examined the case and the record on appeal, you must have, if you made the appeal. Then you know just as much about it as if you were present in court" (R. 870).

Examination of the record of the trial of the civil case of course would not disclose whether, or not, Glasser had disclosed all the evidence in his possession, concerning the criminal case growing out of the still seizure. The inquiry was immaterial. Nevertheless, by the trial judge's remarks, the jury doubtless received the impression that Glasser wrongfully concealed and withheld evidence and that the petitioner was endeavoring to protect Glasser in his testimony.

(b) Examining witnesses in a manner and making remarks favorable to the prosecution and prejudicial to the accused.

The petitioner represented the claimant in a case involving a Chrysler Sedan which the Government sought to forfeit by libel proceedings. After District Judge Barnes testified in the instant case that the libel was tried on the agent's statement, as is frequently done (R. 717-718) and after the petitioner had also testified on cross-examination that the case was tried on the agent's statement (R. 838), the judge asked the petitioner the following question:

"Was any witness sworn or testimony taken?" This question, which necessarily compelled the answer of "No," (R.873) since the case was tried on the agent's report, deprived the petitioner of the benefit of District Judge Barnes' testimony and implied that it was necessary that witnesses be sworn or testimony taken in the federal court in order that a case be disposed of, and because no witness was sworn or testimony taken, some irregularity existed in the manner in which the case was tried.

A still was seized at 6949 Stony Island Avenue in Chicago and as a result thereof, Elmer Swanson, Anthony Hodorowicz and Clem Dowiat were indicted. After indictment Swanson, Hodorowicz and Dowiat were called before District Judge Woodward to be arraigned and for the purpose of entering their pleas and setting the case for trial (R. 235-236, 836).

This was the one and only time that the case was called. This case was stricken from the docket with leave to reinstate a week prior to the date set for trial, at the direction of the investigator in charge of the alcohol tax unit agents and was pending at the time of the instant trial (Exhibit 226, R. 1034). Since there was only an arraignment before Judge Woodward, at which time a plea of not guilty was entered, it would of course be improper for either prosecutor or defense counsel to make any statement of fact with reference to the case (R. 918-920).

Nevertheless, the trial judge examined Swanson (one of the defendants in the Stony Island Avenue Still case) in a manner detrimental to the defense by stating in a declarative question "The case just dropped out of mid air" (R. 232).

The trial judge interrupted the examination of Anthony Hodorowicz, another defendant in the Stony Island Avenue Still case and persisted in treating the arraignment as

though it had been a trial (R. 236, 344, 349), by the following examination:

Q. Was there a full disclosure of facts made before Judge Woodward, as to your connection in that case?

A. No, not that I heard of. I was sitting at the bench.

Q. Were you called before the Judge at any time?

A. Just to mention our names, to be present.

Q. The Judge did not ask you any questions?

A. No.

Q. The lawyers didn't ask you any questions in front of the Judge?

A. No.

Q. Did Mr. Glasser ask you anything in front of the Judge?

A. No.

Q. So you don't know, your recollection is that there was not a complete disclosure of all the facts that connected you with that case, before the Judge?

A. It was all in front of the Commissioner.

The Court: That is all (R. 348).

There was only one appearance before Judge Woodward and that was the arraignment at which time of course, no facts could be stated to the court. The effect of the examination by the trial judge, however, created the inference that Glasser and the petitioner were derelict in their duty in the withholding of facts from Judge Woodward.

During the re-direct examination of Anthony Hodorowicz in spite of the showing in the record that the indictment against the witness was still pending, (R. 236, 317, 837, 918-921) the case had been merely struck from the

docket with leave to reinstate—the trial judge summed up and repeated some of the contentions of the Government as if conclusive against the petitioner by the following:

“The Court: Q. You were never convicted, never paid a fine, and never went to jail?

“A. No” (R. 346).

The answer of the witness although truthful, conveyed to the jury the impression that the witness Anthony Hodorowicz should have been convicted, paid a fine, or gone to jail, this in spite of the fact that Anthony Hodorowicz himself as a Government witness testified that he was not guilty of the offense charged (R. 343, 347) and the further fact that the case is still pending (Exhibit 226, R. 1034).

“The impartiality of the Judge—his avoidance of the appearance of becoming the advocate of either one side or the other of the pending controversy which is required by the conflict of the evidence to be finally submitted to the jury—is a fundamental and essential rule of especial importance in criminal cases.” *Adler v. United States*, 182 Fed. 464, 472 (C. C. A. 5).

When Edward Wroblewski, a Government witness, testified that the petitioner was his lawyer and he had testified in response to the prosecutor's questions that he did not remember how he happened to go to the petitioner, the court conducted a lengthy cross-examination (R. 644-646):

Q. What is that?

A. I don't remember how I met Mr. Roth.

Q. How many lawyers have you hired in your lifetime?

A. Two.

Q. Who were they?

A. Three.

Q. Who were they?

A. Mr. Bolton, Mr. Roth and Mr. Gutsell.

Q. Did you hire Mr. Roth before you hired the other two?

A. After.

Q. After. Well, you must have some recollection of the circumstance concerning the employment of Mr. Roth; now, tell us about it.

A. I don't quite understand your question.

Q. You know something about how you happened to hire Mr. Roth, now tell us the story about it.

A. Well, I don't know, as I say, I don't remember how I got acquainted with Mr. Roth.

Q. How did you get acquainted with him?

A. I don't remember that.

Q. When did you first see him? Where did you first see him?

A. In his office.

Q. In his office?

A. Yes.

Q. How did you happen to go to his office?

A. I don't know.

Q. What is that?

A. I don't remember, Your Honor.

Q. When was this?

A. For this trial, in 1937, I think it was.

Q. In 1937?

A. Yes, sir.

Q. Did somebody take you to his office?

A. I don't remember.

Q. How old are you?

A. 31.

Q. And what education have you had?

A. Two years high school.

Q. What is that?

A. Two years high school.

Q. And you don't want to tell us now, how you got to Mr. Roth's office?

A. Your Honor, I don't remember.

Q. Why don't you remember? Is there any reason why you should not remember?

A. No reason. I just don't remember.

Q. Did your brother take you there?

A. I don't remember.

Q. How old are you now?

A. Past 31.

Q. How old is your brother?

A. 28.

Q. What is that?

A. 28.

Q. You are 31?

A. Yes, your Honor.

Q. Mr. Roth represented you in Indiana?

A. Yes, sir.

Q. For the trial?

A. Yes, sir.

Q. And at that time you were convicted?

A. Yes.

Q. In a trial before the Court and Jury?

A. Yes, your Honor.

Q. How much did you pay Mr. Roth?

A. \$250.00.

Q. \$250.00. And you don't know how you got up to his office?

A. I don't know now how I ever got acquainted.

Q. Nobody recommended him to you?

A. No, sir, I don't remember whether it was a rumor about his name.

Q. What is that?

A. A rumor. I don't remember how I met Mr. Roth.

This lengthy cross-examination of a Government witness would have been highly improper had it been conducted by the prosecutor. The engagement of the petitioner by the witness was in connection with a case not in issue in the instant trial.

This cross-examination by the trial judge created the prejudicial inference that the witness was concealing something concerning the petitioner and that there was something irregular about his engagement.

Another instance of the prejudicial attitude of the trial judge was shown when he interrupted the cross-examination of Kretske and by his questioning led the jury to believe that there was some irregularity about Kretske's conduct in obtaining the assistance of the petitioner in the trial of alcohol cases, none of which Kretske had ever tried, either for the Government when an Assistant United States Attorney or for the defense (R. 816-817).

In continuing the cross-examination of Kretske, the trial judge stated that there was nothing difficult about the trial of alcohol cases (R. 816).

That many complex questions are presented in the trial of any case whether it be alcohol, narcotic, mail fraud, counterfeiting or any other violation cannot be doubted. The harmful effect of the statement of the trial judge cannot be overemphasized.

(c) In making statements of alleged fact based on his personal knowledge.

The most casual examination of this record will show many instances in which the trial judge undertook the function both of a witness and a prosecutor.

The judge clearly implied to the jury that he had personal knowledge of the facts which he thought were relevant and material to the issues then being tried. During the examination of Glasser without any previous reference having been made thereto, the trial judge cross-examined Glasser in regard to a certain Nick Abosketes as follows:

The Court: Did you know at that time that Nick Abosketes was under indictment in the Eastern and Western Districts of Wisconsin?

A. No, sir.

Q. Did you make any inquiry?

A. No, sir; you see, my job was strictly to prosecute.

Q. You were interested in getting Nick Abosketes?

A. Yes, sir (R. 941).

At R. 943 the judge re-emphasized this matter as follows: "I think my impression was that there were two indictments pending in Wisconsin against Nick Abosketes on February 25, 1938. I will ask the District Attorney's Office to check with the Alcohol Division sometime during the day, to make sure about it."

At R. 1030, the judge said: "At my request, the Government has furnished me with this. Let the record show that

Nick Abosketes was indicted in the Western District of Wisconsin on January 27, 1936, and that he was indicted in the Eastern District of Wisconsin on July 30, 1938." * * * "To the indictment in the Western District he pled guilty and was sentenced." * * * "After that the indictment in the Eastern District was dismissed. It covers the same subject. I know that for a fact." * * * "I happen to know all about Nick Abosketes."

The law is well settled that the trial judge should not assume the role either of an advocate or witness for the prosecution.

Quercia v. United States, 289 U. S. 466.

Terrell v. United States, 6 F. 2d 498 (C.C.A. 4).

Williams v. United States, 93 F. 2d 685 (C.C.A. 9).

Frantz v. United States, 62 F. 2d 737 (C.C.A. 6).

(d) Limiting the right of cross examination to show bias, reward by and the coercive effect of Government officers.

Government witness Swanson was under indictment in the federal courts in Illinois and Ohio (R. 232, 238). He testified to having had interviews with agent Bailey, who was active in bringing about the present prosecution (R. 712). Swanson was asked the following question on cross-examination: "Well, he (meaning Bailey) could get that case called (for trial) or having something to do with it." The court sustained the objection of the prosecution and stated, "That is entirely out of order. Mr. Bailey is not running the courts down in Cleveland" (R. 237). The purpose of the question obviously was not as the trial court seemed to think, that Bailey was not running the courts in Cleveland, but to show the state of mind of the witness as cross-examination possibly might develop—that his testimony was biased because he was under the coercive

effect of the officers of the United States who were party to the present prosecution.

On July 19, 1939, Government witness Dewes was sentenced to be confined in a penitentiary for a period of two years. On July 27, 1939, while still detailed in Chicago, he gave the Government a statement (Exhibit 114, R. 551). He was brought back from Leavenworth Penitentiary and lodged in the county jail at Chicago on September 6 or 7, 1939, where he was held 7 or 8 weeks, during which time he was brought to the Federal Building about twenty times. Then he was taken to Milan, Michigan, from whence he was brought to testify (R. 554). At the trial he testified to matters not given in his statement of July 27, 1939.

He was asked, on cross-examination, whether or not he was not at Milan, Michigan. The court in sustaining the prosecutor's objection, stated, "They are both Federal penitentiaries." When further asked on cross-examination—"Isn't it a fact that you are in what is known as a reformatory now," the court sustained the prosecutor's objection and stated, "You are in the Milan penitentiary now." The witness then said, "Yes, sir" (R. 555). The cross-examiner's purpose was to show that the prisoner had received favorable treatment in return for his testimony by being detained at Milan, Michigan, a federal reformatory, when he had been sentenced to confinement in a penitentiary.

Cross-examination is a matter of right. It is prejudicial error to limit cross-examination of a Government witness when the purpose of cross-examination is to show bias, coercion of situation, or expectation or hope of reward.

Alford v. United States, 282, U. S. 687.

Farkas v. United States, 2 F. 2d 644, 647 (C. C. A. 2).

King v. United States, 112 Fed. 988, 995, 996 (C. C. A. 5).

Collenger v. United States, 50 F. 2d 345, 350, 351 (C. C. A. 7).

Cossack v. United States, 63 F. 2d 511, 516 (C. C. A. 9).

Asgill v. United States, 60 F. 2d 776 (C. C. A. 4).

Minner v. United States, 57 F. 2d 506 (C. C. A. 10).

Heard v. United States, 255 Fed. 829 (C. C. A. 8).

Mr. William Campbell, the District Attorney for the Northern District of Illinois, testified as a witness in rebuttal, and was required by Mr. Ward, the prosecutor, to give a yes or no answer to the question, "Q. At that time did you, preceding Mr. Glasser's entering the grand jury room to testify as a witness, have a conversation with him in which you used the following language—'Dan, I knew you were going into the grand jury room this morning and I thought I would go in and put in a good word for you. I wanted to tell the grand jury there was nothing in your official conduct that would require investigation'?" (R. 1041). Mr. Campbell at first replied, "I had a conversation with him—" Mr. Ward interrupted, "Q. Did you make that statement? A. I did not. Mr. Ward: Cross-examine."

Whereupon Mr. Stewart stated, "Now, your Honor, we had this discussion in chambers and the record does not show our talk there. Is it your Honor's ruling that on cross-examination I am limited to what he just stated now? The Court: That is all. Mr. Stewart: Because, if I am not, I would like to go into other matters to show which is most likely true— The Court: No, you are limited to it. Mr. Stewart: If I am so limited there is no cross-examination."

It is evident that Mr. Campbell and Glasser had a conversation similar to the one narrated by Glasser, as Mr. Campbell began to describe a conversation before being stopped by Mr. Ward. By the ruling of the court the defense was prevented from attempting to show by cross-examination of Mr. Campbell that he made remarks substantially similar to those testified to by Glasser. Defense counsel were also prevented by this ruling from attempting to refresh Mr. Campbell's recollection regarding the alleged matter and were also prevented from inquiring as to whether or not the witness had ever made any statements inconsistent with his denial of this conversation.

"Cross-examination should be allowed as to details corroborative of defense contentions." *Dist. of Co. v. Clawans*, 300 U. S. 617, 632.

(e) In admitting in evidence Government agents' reports containing the criminal history of a co-defendant and ex parte statements tending to involve the co-defendant in a violation of the law.

Exhibits 81 and 113 introduced in evidence (R. 532, 533) contain a statement of various investigators' reports and the proposed testimony of witnesses, tending to implicate the defendant, Kaplan, in connection with the operation of illicit distilleries.

At the very beginning of Exhibit 81 before it enters into a detailed discussion of the investigation, there appears the characterization of the defendant, Kaplan, as follows:

"Louis Kaplan, 3125 W. 19th St., Chicago, Illinois, male, white, Jewish descent, age 55, height 5 ft. 8 inches, weight 215 pounds, stocky build, married, citizenship not known; owns and operates the Kaplan Motor Sales Company, 3152 Ogden Ave., Chicago, Illinois. (Automobile sales agency for the Nash car.)

Reported to be worth approximately \$200,000.00, criminal record not known with exception of his reputation as a bootlegger in Chicago, Illinois. (A Louis Kaplan was arrested at 616 W. Madison St., Chicago, Ill., for violation of the National Prohibition Act on May 10, 1923, and sentenced to pay a fine of \$300.00; a man by the same name was also arrested by Chicago Police officers February 7, 1935, together with one Edward Dewes, in connection with the killing of Tony Pinna and seriously wounding Vito Messino at Louis Kaplan's garage, 3152 Ogden Ave., Chicago, Ill., in which Louis Kaplan stated he was a victim of an attempted kidnapping and was released)."

That portion of the statement tending to implicate Kaplan in connection with the operation of an illicit distillery is hearsay of the most pronounced type and a denial of the Constitutional right to be confronted with witnesses. But a more serious question arises in the characterization of Kaplan, by the agent making the report, as a reputed bootlegger worth \$200,000.00, and that he had been arrested for murder and that he was sentenced to pay a fine for violation of the National Prohibition Act. This was highly prejudicial, inflammatory and constituted hearsay and was reversible error. *United States v. Dressler*, 112 F. 2d 972, (C. C. A. 7); *Brady v. United States*, 39 F. 2d 312 C. C. A. 8); and error as to one defendant in a conspiracy case is error as to all. *Logan v. United States*, 144 U. S. 263. Immediately after the exhibit was read to the jury a motion was made to withdraw a juror and declare a mistrial. This was timely, and preserved the point, *Pharr v. United States*, 48 F. 2d 627 (C. C. A. 6). The same characterization of Kaplan appeared in Exhibit 113, which was an agent's report implicating Kaplan in another illicit distillery.

The exhibits were not introduced for the purpose of notice to Glasser that he had a case to present to the grand

jury and to attempt to prove that he had not done so. It was not contended that he did not present the cases. The evidence of the Government shows that he did present them (R. 528-529).

“It is vastly more important that the attitude of the trial judge should be impartial than any particular defendant however guilty he may be, should be convicted. It is too much to expect of human nature that a judge can actively and vigorously aid in the prosecution and at the same time appear to the laymen on the jury to be impartial”. *Williams v. United States*, 93 F. 2d 685, 694.

See also:

Hunter v. United States, 62 F. 2d 217 (C. C. A. 5).

Frantz v. United States, 62 F. 2d 737 (C. C. A. 6).

Adler v. United States, 182 F. 464 (C. C. A. 5).

It is respectfully submitted that petitioner was deprived of a fair and impartial trial because of the acts and conduct of the trial judge.

III.

The prosecutor throughout the trial was guilty of misconduct and violated the rights of the petitioner to a fair and impartial trial.

In *Berger v. United States*, 296 U. S. 78, in commenting on the duties of the prosecutor, at page 88 this Court said:

“The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore in a criminal prosecution is not that it shall win a case, but that justice shall be

done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

“Moreover, we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential. A new trial must be awarded.”

The violations by the prosecuting attorneys of proper procedure in the conduct of the trial and introduction of evidence were so numerous that space does not permit of separate argument regarding each of them. Therefore, leave of Court is asked to submit brief mention of some of these instances in a single section of this brief as follows:

Prosecutor McGreal cross-examined petitioner at great length as to the disposition of the Chrysler Sedan case (R. 871-875). Prosecutor Ward on re-cross examination again questioned petitioner as to the Chrysler Sedan case (R. 882-884). Objection was made by defense counsel to the repetition of cross-examination and to the changing of cross-examiners at which time the following occurred:

Mr. McGreal (the first cross-examiner): May I answer that, your Honor?

The Court: You won't need to. Objection overruled. Proceed (R. 882).

This dwelling on the One Chrysler Sedan case by repeated cross-examination was injurious to petitioner and evidently caused by the desire of the prosecution to overcome Judge Barnes' testimony. In addition, the prosecution later took advantage of this ruling of the judge to change examiners on cross-examination of Glasser and to cover at length many of the subjects of his first cross-examination after an intermission of Saturday and Sunday when the second cross-examiner had had the opportunity of going over the record and endeavored to improve upon the first cross-examination with the aid of this additional facility. The arbitrary ruling of the court obviously violated the petitioners fundamental rights.

During this objectionable cross-examination of the petitioner the prosecutor still dwelling on the One Chrysler Sedan case, required petitioner to answer the legal question that if a variance had existed Glasser would have had a right to amend the pleading and that Glasser did not ask leave of Judge Barnes to amend the pleading. There was no question of variance ever raised or suggested in the One Chrysler Sedan case and the only purpose and effect of this improper cross-examination of petitioner was to raise the inference that the automobile case had been decided on the ground of variance and that Glasser had failed to perform his duty in not endeavoring to amend the pleading (R. 883). Similar unfounded inferences are frequent throughout the record. See *United States v. Perlstein*, 120 F. (2d) 276, 283.

It plainly appears that the prosecutor was again misleading the jury with unfounded inferences when United States Commissioner Walker, called as a Government witness, testified that he discharged the defendant in the Kwiatowski case on a finding of no probable cause shown (R. 289). The Government's evidence showed that all the evidence

in its possession was disclosed to the commissioner at the hearing of the case (R. 397-398). In spite of this, the prosecutor stated in a declarative question, "It does not mean that there may not be probable cause but that it was not shown to you?" (R. 289). By this latter unfounded question not based on any evidence in the record, or even a suspicion, the prosecutor made it appear to the jury that Glasser had withheld material evidence in the presentation of this case. This course of conduct was vigorously denounced by this Court in *Berger v. United States*, 296 U. S. 78, 88, where it was held "But, while he (the prosecutor) may strike hard blows, he is not at liberty to strike foul ones."

The extreme length to which the prosecutor was forced to go in order to obtain a conviction in this case is shown by his attempt to obtain any kind of damaging presumptions by unsuccessfully attempting to put words into the mouth of the prosecution witness, Wm. Wroblewski as follows:

Q. Well, now would it refresh your recollection if I was to call your attention to a statement that you made to Mr. Devereaux and Mr. Bailey on August 3, 1939, in which you said, "On one occasion while I was in Roth's office, he, Kretske, said to me if I had any cases fixed, don't talk about them or you will get into some trouble." Do you remember that?

A. I don't believe it was Kretske.

Q. Who told you that?

A. Well, the way that came out. I went down to see Mr. Al Roth, and told him that I was having trouble with the law. I said that the law is looking for some information from me, and Mr. Al Roth told me if I gave information to anybody I would be implicated in the case.

Q. Was it he used the word "implicated"?

A. That is right.

Q. So that was an occasion when you were in Roth's office that Mr. Roth said that to you?

A. Yes, sir.

Q. Now, are you sure he didn't say: "if you had any case fixed, don't talk about them, or you will get into more trouble"? That he didn't use that language?

A. Well, I might have expressed myself that way at the time, but I recall now that the right way is implicated.

Q. Implicated?

A. Yes, sir (R. 636).

This questioning made it appear to the jury that Wm. Wroblewski had a conversation with Kretske concerning fixing cases and when the prosecutor failed in his attempt to have the witness so state, tried to have the witness state that the petitioner had such a conversation, when all the witness testified to, was that petitioner as his counsel advised him of his Constitutional right against self incrimination.

The persistent misconduct of the prosecutor is further emphasized during the examination of his witness Dukatt.

Harry Dukatt was indicted for an alcohol violation and thereafter engaged petitioner to represent him. The petitioner together with his client Dukatt, called at the clerk's office to examine the indictment (R. 861).

An examination of the indictment disclosed that it carried a conspiracy count with a number of overt acts. The seventh overt act being in words and figures as follows: "That on, to wit, April 15, 1938 at, to wit, Chicago, Illinois,

Harry Dukatt, convoyed certain Andy's Motor Service Trucks'' (Exhibit 196, R. 880).

The vicious attempt by the prosecutor to inject the prejudicial inference that petitioner was in possession of a confidential Government report is disclosed by the following examination of Dukatt:

Q. You looked at some file?

A. Well, I didn't look at any file, he just was showing something about an indictment, what I was indicted for, and I happened to see something about the Government following me.

Q. What?

A. I happened to see something when the Government men were following me.

Q. You mean you read a report?

A. Well, I didn't have any report. He was shown some papers about my indictment and I happened to glance over it and seen a few words concerning me.

Q. You saw something about the Government following you?

A. Yes, sir.

Q. You don't know whether that was indictment or not, do you?

A. I couldn't tell you that.

Q. Did you see Mr. Roth making a lot of notes at that time?

A. I don't know how many notes he made, I wouldn't say how many notes he made.

Q. That was just to refresh your recollection at the time, does that refresh your recollection?

A. He wrote something down.

Q. Well, you knew at that time it was an officer's report, didn't you?

A. Well, I really don't know what it really was. I wanted to know what I was indicted for.

Q. Well, would this refresh your recollection? (Handing document to witness.) In other words, I have the report, I was reading here, the officer's report of the investigation, the report, "As much as I saw seemed to be correct in stating my movements". Does that refresh your recollection?

A. Well, there were a few times I happened to see where the government followed me, that happened to refresh my memory, seeing it was me, that is about all I remember.

Q. Now, on the second case that you had, did you have any discussion with Mr. Roth about probation?

A. Well, I had him handle both cases for me.

Q. The case you had before Judge Holly?

A. Yes, sir.

Q. Mr. Roth discussed probation with you?

A. That is the only thing.

Q. Keep your voice up.

A. The only thing Mr. Roth discussed with me was he thought I had a good chance to get probation, because I was never indicted before in my life at any time with any crime, but he wouldn't guarantee me nothing.

Mr. Ward: Will you mark this Exhibit 158? (Document so marked).

Mr. Ward: Q. Will you look at this, as being part of a report in your case, does that look like the report you were reading from with Mr. Roth?

A. Well, to be honest with you, I don't just remember, I don't know if it was this size of paper or larger, I don't remember, because I really didn't pay much attention at that time (R. 701-702).

It can plainly be seen from the testimony of Dukatt that petitioner and his client were examining the indictment in the Court files. Nevertheless, driven to desperation because of the lack of any evidence against the petitioner, the prosecutor was compelled to resort to the foully suggestive cross-examination of his own witness which was intended to convey to the jury the impression that petitioner and his client were examining a confidential agents report which presumably was in the possession of Glasser.

Conduct of this character, by the prosecutor was condemned in *Pharr v. United States*, 48 F. (2d) 767 (C. C. A. 6).

The bill of particulars in the instant case made no mention of the Chrysler Sedan case (R. 77-89). Nevertheless, when objection was made by defense counsel to the introduction of evidence relating thereto on the ground that the case was not in the bill of particulars, the prosecutor in order to induce the court to overrule the objection misstated to the court that the case was in the bill of particulars (R. 219).

It was highly important in the trial of this case to permit Glasser to examine files introduced in evidence by the prosecution so as to refresh his recollection. This would be very helpful to all defendants. During the cross-examination of Glasser he was questioned as to a few of the thousands of cases handled by him. The files relating thereto had already been put in evidence by the Government. Without authorization by the court, these exhibits were kept in the possession of the prosecutor who, although

ordered to show them to Glasser during a week end recess, refused to do so on the ground that Glasser was not accompanied by his attorney (R. 980, 982-983). In the first place the ordinary safeguarding of the interest of parties litigant requires that exhibits once submitted in evidence be retained in the possession of the clerk of the court. In any event it is clear that Glasser has an unqualified right to examine such exhibits. Here the denial of such right to Glasser forced him to state in truth, but with naturally prejudicial effect on the jury, that he did not remember the various cases referred to by the prosecuting attorney.

The callous disregard of the fundamental rights of an accused person, which characterizes the conduct of this case throughout on the part of the Government, is reflected in the surreptitious manner in which the Government submitted to the jury Exhibit 92. This was a pre-trial statement of Government witness Raubunas dated October 20, 1939, calculated to corroborate his testimony at the trial. The court sustained objection to its introduction (R. 712). It later developed, however, and clearly appears that this exhibit was included in a group of 33 exhibits submitted by the Government at the close of defendant's case and taken to the jury room (R. 1034).

That the prosecutor over-stepped the bounds and fairness which should characterize the conduct of such an officer in the prosecution of a criminal case is overwhelmingly shown by the invidious insinuation that United States District Judge Igoe, a witness for the defense, was acquainted with numerous persons of low character and violators of laws of the United States (R. 907-908).

The prosecutors throughout the trial violated the rights of the petitioner by interrogating witnesses with leading questions on material matters. Many of these questions contained several alleged statements of fact. These in-

stances were so numerous that it would unduly lengthen this brief to set them forth verbatim and leave is respectfully asked to refer to them by name of the witness and the page number of the record as follows:

Witness Swanson—Pages 226-227, 229-230-231.

Witness Del Rocco—Pages 244-245.

Witness Joseph Cole—Page 573.

Witness Ellis—Page 589.

Witness Wm. Brantman—Pages 659-660.

Witness Harry Dukatt—Page 703.

Witness Frank Hodorowicz—Pages 296, 301, 303-304-305-306.

Witness Ralph Sharp—Page 380.

Witness May Jurkas—Pages 612-613.

Witness Stanley Slesur—Page 623.

Witness Edward Wroblewski—Pages 674-675.

Witness Nick Abosketas—Page 673.

Witness E. L. Gates—Page 604.

In many instances the prosecutors committed prejudicial error by improper interrogation of Government witnesses on re-direct examination amounting in substance to cross-examination of their own witnesses. Leave is respectfully asked to refer to the witnesses and page numbers of the record, instead of setting forth the erroneous examination, which in some instances is quite lengthy.

Witness Workman—Pages 206, 209.

Witness Frank Hodorowicz—Page 341.

Witness Sharp—Page 380-381-382.

Witness Investigator Rossner—Pages 399, 405.

Witness Raubunas—Pages 521, 523.

It is respectfully submitted that the misconduct of the prosecutors in this case is by far greater than in *Berger v. United States*, 296 U. S. 78 where this Court reversed because of the misconduct of the prosecutor.

IV.

There was no evidence to support the verdict against the petitioner.

The substance of the evidence merely shows that petitioner, who specialized in federal practice (R. 883) handled four cases referred to him by Attorney Kretske (R. 874, 230, 861, 888), one by Attorney Baker (R. 749) and two by direct engagement of the clients (R. 858, 867), with Glasser appearing as his adversary in all of them.

1. United States v. One Chrysler Sedan.

In this referred case by Kretske, petitioner was engaged to represent the claimant, Rose Vitale, in an action brought by the United States to forfeit her automobile. Petitioner prepared and filed the necessary pleadings and on the trial date appeared before District Judge Barnes ready to proceed (R. 838).

The testimony of Judge Barnes, a defense witness is as follows:

“Q. And the point involved here, Judge, is this. Were you sufficiently informed concerning the facts involved in that case to make a decision on the law and the evidence?

A. Well, it is the agent's statement. They never testified to more than their statement. They try their cases frequently on their statements, and that statement is not sufficient to forfeit a car. The car was not

in the place where the still was, the car belonged to the wife, and I had no more right to take it than I had to take yours.

Q. And anything the agent might have said could not have changed that?

A. Well, he states in writing what he expected to prove. What he expected to swear to.

Q. And under these circumstances, you very often hear the cases without the actual testimony?

A. Very, very frequently.

Q. And did Mr. Roth appear to represent his client, and Mr. Glasser appear to represent the government in a proper fashion?

A. They not only appeared to, they did" (R. 718).

Surely there is nothing in the conduct of the petitioner that is not consistent with the honest conduct of a lawyer. He certainly had a right to accept employment in a referred case. There isn't room for a guess or surmise of misconduct of the petitioner.

2. United States v. Elmer Swanson, Anthony Hodowicz and Clem Dowiat (6949 Stony Island Ave. still case).

Kretske referred the three defendants in this case to the petitioner for trial. When petitioner and his clients appeared before United States Commissioner Walker for a preliminary hearing, Glasser obtained a three week continuance over the vigorous objection of the petitioner (R. 295, 835). Glasser demanded the long continuance because the Government agent in charge of the investigators told him that he did not think they had enough evidence to win the case (R. 918-919). Nevertheless, the three clients were indicted before that had an opportunity to have their hearing before the Commissioner on the adjourned date. Pleas

of not guilty were entered to the indictment and the case was set for trial (R. 836).

When the petitioner and his clients after preparing for trial on May 2, 1938 (Exhibits 182, 183, 184, R. 831) appeared on the trial date, May 5, 1938, ready for trial, they learned that the case on April 28, 1938 had been stricken with leave to reinstate, without notice to either clients or their counsel (R. 235-236, 836, 837).

The uncontradicted testimony is that the case was stricken with leave to reinstate on motion of Glasser at the direction of the Government agent in charge of the investigators, who advised Glasser they did not have sufficient evidence to convict (R. 918-920). The record discloses the case as never having been reinstated (Exhibit 226, R. 1034) with Glasser out of office a year.

No inference that petitioner was guilty of any wrong doing can possibly be drawn from the fact that the investigator in charge of the Government agents directed Glasser to move to strike the case with leave to reinstate because of lack of evidence.

One would have to surmise or guess that because this case was referred to petitioner for trial, and that he accepted the employment, that he was involved in an unlawful conspiracy.

3. United States v. Edward Dewes.

The substance of the evidence is that Kretske referred Dewes to the petitioner to try his case. The petitioner prepared the case for trial, together with Dewes, his co-defendants, and their lawyers (R. 764). The case was tried by the petitioner and Dewes was convicted and sentenced to the penitentiary (R. 857-858, 868, 555).

Evidence of guilt cannot be inferred from accepting from another lawyer a case to be tried.

4. United States v. Harry Dukatt.

The substance of the evidence is that the petitioner represented Dukatt, who was referred to him by Kretske, in a hearing before the United States Commissioner, where he was discharged. Dukatt was indicted in two cases and entered a plea of guilty to both indictments, being represented by the petitioner, and was sentenced to the penitentiary (R. 700-701).

Again the Government seeks to infer misconduct from accepting a referred case from Kretske.

5. United States v. About 151 Acres of Land, etc.

The substance of the evidence in this case is that Attorney Baker tried the case in the District Court. The Government represented by Glasser was victorious. Thereafter Baker referred this case to the petitioner to prosecute an appeal (R. 749). The judgment of the lower court was reversed. 99 F. 2d 716. Petitioner represented one of the claimants who was indicted while the civil case was pending on appeal (R. 868-869) and was thereafter substituted by another lawyer who disposed of the criminal case (R. 880-881).

Again the Government seeks to infer misconduct because another lawyer referred a case to the petitioner. This evidence does not even rise to the dignity of a suspicion of misconduct.

6. United States v. Paul Svec.

The substance of the evidence is that the petitioner represented Svec in two criminal cases, Glasser prosecuting. On the trial of the first case Svec was convicted and sentenced to the penitentiary (R. 566). On appeal taken from this conviction the judgment of the lower court was affirmed. While Svec was at large on an appeal bond he was

again arrested and charged with another offense and after a full hearing before the United States Commissioner was discharged (R. 557, 568).

Certainly no inference of misconduct can be drawn from the fact that petitioner was engaged to represent Svec in two cases.

7. United States v. Frank Hodorowicz, Mike Hodorowicz, Pete Hodorowicz and Clem Dowiat.

In this case the substance of the evidence merely shows that after appearing on behalf of the defendants on arraignment the petitioner conferred with Glasser as to his attitude on a plea of guilty and was advised that his attitude was that of the imposition of a substantial penitentiary sentence (R. 853). Petitioner informed his clients of Glasser's attitude. Another attorney was substituted and all the defendants were convicted, Glasser prosecuting (R. 859).

One would have to resort to conjecture of the most pronounced kind to say that this is any evidence of an unlawful conspiracy. There is not one iota of evidence that the petitioner did anything that was inconsistent with the conduct of a lawyer performing his duties.

No inference of guilt can possibly be drawn from accepting the employment of defending alcohol cases or that Glasser represented the Government in cases when the petitioner was on the other side.

The testimony of Alexander Campbell, admitted over objection (R. 98, 680), which of course had nothing to do with any case in the Northern District of Illinois, that the petitioner went to see him in Indiana five months after the Wroblewskis had been indicted in the Northern District of Indiana to ask him if something could be done about not indicting the Wroblewskis in the Northern Dis-

trict of Indiana is incredible and contradicted, as the physical facts, the court records (Exhibits 186-A and 186-C, R. 840), correspondence (Exhibit 137, R. 842) and testimony (R. 676, 838, 840) show that the Wroblewskis were under indictment for five months in the Northern District of Indiana and that the petitioner and the Wroblewskis had knowledge of this fact at the time of the alleged conversation. The facts are more fully covered in the statement of the case pp. 10-12 and in the interest of brevity will not be repeated here.

A summary of all the evidence in connection with this entire case against this petitioner fails to establish the most essential element of a conspiracy case—namely an unlawful agreement. It is well established that where the evidence leaves the essential element of an unlawful agreement open to conjecture a verdict for the defendant should be directed. *Symonette v. United States*, 47 F. 2d 686, 688 (C. C. A. 5); *Dowdy v. United States*, 46 F. 2d 417, 423 (C. C. A. 4); *Linde v. United States*, 13 F. 2d 59, 61 (C. C. A. 8).

“No inference of fact or of law is reliable drawn from premises which are uncertain.” *United States v. Ross*, 92 U. S. 281, 283-284.

It is needless to state how noxious the repetitious employment of this device of inferences can become and how tragically unjust its results can be in a criminal case.

During the trial of the instant case the Government introduced evidence concerning other cases that Glasser handled in which his conduct was attacked, in which cases many other members of the local bar appeared as counsel opposing him (R. 198, 251, 256, 270, 299, 311, 325, 383, 411, 516, 556, 617, 632, 637, 696).

The petitioner sincerely contends that because he appeared in a few cases against Glasser, which were referred

to the petitioner by Katske, petitioner was singled out as a necessary victim in this case in a desire to "get" Glasser (R. 948).

The evidence fails to establish any evidence of guilt. On the contrary, the evidence is convincing of the petitioner's innocence. The motion for a directed verdict of not guilty should have been sustained.

V.

To constitute a valid indictment for an infamous crime in a federal court, it must have been publicly presented in open court, the grand jurors present answering to their names, the indictment then being delivered by the foreman to the court and the fact entered in the record.

The record fails to show that the indictment was returned in open court by the grand jury. A motion to quash on this ground was made (R. 142, 149). The Government made a motion to strike (R. 150). The motion to quash was denied (R. 42).

The record shows that the September, 1939 grand jury was discharged on September 29, 1939 (R. 39) and there existed no record of the return of any indictments on that day. A new term of court commenced on October 2, 1939. Judicial Code, sec. 79, 28 U. S. C. sec. 152.

On October 30, 1939 there was created for the first time a purported record that the grand jury returned four indictments in open court on September 29, 1939, with the notation, "Added 10/30/39" (R. 39). It is significant to note that the purported record was made after October 12, 1939, when the petitioner was given leave to file a motion to quash (R. 40) and one day before the petitioner filed his motion to quash on October 31, 1939 (R. 40).

Under Rule 30 of the District Court, the motion was required to be served on the United States Attorney not later than 4:00 P. M. of the prior day, October 30.

The Circuit Court of Appeals, in holding that the record in this case was sufficient, stated that the face of the indictment contains the notation, "A true bill," "George A. Hancock, Foreman," and the statement, "Filed in open court this 29th day of September, A. D. 1939, Hoyt King, Clerk," and that the record before them shows that on September 29, 1939, at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois the grand jury returned four indictments in open court (R. 1119). The Circuit Court of Appeals obviously gave full force and effect to the record that four indictments were returned in open court on September 29, 1939, notwithstanding the notation, "Added 10/30/39," which is some thirty days after the discharge of the grand jury and with no showing in the record by what authority the addition to the record was made or that it in any way identified the indictment in the instant case.

The praecipe for the record (R. 132) called for a true and complete record of the return of the indictment and order to file same. All that was supplied appears in the record, page 38. No memorandum of any kind was furnished from which it might appear that the grand jury returned four indictments in open court on September 29, 1939, and that this petitioner was named as a defendant in any of them. Moreover, the unauthorized record created on "10/30/39" without notice, makes no mention of the persons against whom the four indictments were returned. There is nothing in the notation identifying the indictment in the instant case as one of the four indictments mentioned.

The first step to a valid indictment is that it was returned in open court by a grand jury authorized to return it. Next, the record should affirmatively show that fact.

This Court states the applicable rule in *Crain v. United States*, 162 U. S. 625, 644-645 as follows:

“Neither sound reason nor public policy justifies any departure from settled principles applicable in criminal prosecution for infamous crimes. Even if there were a wide divergence among the authorities upon this subject (failure of record to show arraignment), safety lies in adherence to established modes of procedure devised for the security of life and liberty. Nor ought the courts, in their abhorrence of crime nor because of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused are often prepared. Before a court of last resort affirms a judgment of conviction of, at least, an infamous crime, it should appear, affirmatively, from the record that every step necessary to the validity of the sentence has been taken.”

Without a valid indictment no valid sentence can be entered. Because there is no showing that the paper labeled indictment was returned in open court by a grand jury, the judgment is void.

The declaration of Amendment V to the Constitution, that “No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury” is jurisdictional. *Ex Parte Bain*, 121 U. S. 1.

There must be an affirmative showing in the record that the indictment was publicly returned in open court by

the grand jury and by its foreman delivered to the clerk. *Renigar v. United States*, 172 Fed. 646 (C. C. A. 4). *Angle v. United States*, 172 Fed. 658 (C. C. A. 4). *Yundt v. The People*, 65 Ill. 373. *Rainey v. The People*, 8 Ill. (3 Gil.) 71. *State v. Heaton*, 23 W. Va. 773.

The notation on an indictment, "Filed in open court" does not meet the legal requirement that the record show the *return* of the indictment in open court. *Felker v. State*, 54 Ark. 489.

In the *Felker* case the indictment bears the endorsement of the clerk "filed in open court on the 22nd day of February, 1890." This is similar to the endorsement in the instant case. The court held in the *Felker* case that where an indictment showed that it was filed in open court on a certain date, but it did not appear by the record that the indictment had been returned into court by a grand jury, such omission was fatal. To the same effect: *Renigar v. United States*, *supra*; *Kelly v. The People*, 39 Ill. 157.

It is respectfully submitted that the motion to quash the indictment on the ground assigned under this point should have been sustained.

VI.

- (a) **The indictment is vague, indefinite and uncertain and states the conclusion of the pleader, thereby failing to inform the petitioner of the nature and cause of the accusation.**

A demurrer was interposed (R. 42-48) and overruled (R. 60)

In *United States v. Cruikshank*, 92 U. S. 588, 593, the requirements of a criminal pleading are clearly laid down:

"In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accu-

sation'. Amend. VI. In *U. S. v. Mills*, 7 Pet. 142, this was construed to mean, that the indictment must set forth the offense 'with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged;' and in *U. S. v. Cook*, 17 Wall. 174, 21 L. ed. 539, that 'Every ingredient of which the offense is composed must be accurately and clearly alleged.' It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species; it must descend to particulars.' 1 Arch. Cr. Pr. and Pl. 291. The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, and not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place and circumstances."

The indictment in this case must stand or fall on the charging part as the means alleged formed no part of the charge. This elementary proposition of law is not disputed by the prosecutor who drew the indictment.⁷ Indeed,

⁷ The following quotation is from the argument of the prosecutor in defense of the indictment in the instant case in the Circuit Court of Appeals:

"In this particular case the means need not be set out at all because it can be seen that the conspiracy charged is unlawful and the means by which the unlawful act is to be accomplished is immaterial." (Gov. Br. p. 26, *United States v. Roth*, No. 7317 C. C. A. 7th.)

the Solicitor General in his brief in opposition to the petition for certiorari, page 26, likewise concedes that the detailing of means whereby a conspiracy was to be accomplished formed no part of the charge.

The charging part of count two of the indictment, paragraph 14 (R. 28) is as follows:

“And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the defendants: Daniel D. Glasser, Norton I. Kretske, Anthony Horton, otherwise known as Tony Horton, Louis Kaplan and Alfred E. Roth, well knowing the premises aforesaid, in the City of Chicago, in the State and District aforesaid, and at other places to the said grand jurors unknown, heretofore, on, to wit, March 15, 1935, and thereafter continuously up to the date of the return of this indictment, in violation of the provisions of Section 88, Title 18, of the United States Code of Laws, did wilfully, unlawfully, and feloniously conspire, combine, confederate, and agree together, and with each other, and with divers other persons to the grand jurors unknown, to defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by a United States Attorney or an Assistant United States Attorney to prosecute certain delinquents for crimes and offenses cognizable under the authority of the United States as the same should be presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud, more particularly its right to a conscientious, faithful and honest representation of its interests in certain suits, controversies, proceedings, matters, actions, and causes brought and pending in the United States Courts in the Northern District of Illinois; that is to say, by promising, offer-

ing, causing and procuring to be promised and offered, money and other things of value to an officer of the United States, and to persons acting for and on behalf of the United States in an official function, under and by authority of a department and office of the Government of the United States, with intent to influence his decision and action on certain questions, matters, causes and proceedings which were at times pending, and which were by law brought before such officer or officers in his or their official capacity, and with the intent to influence such officer or officers to commit and aid in committing, and to collude in committing certain frauds on the United States, and to induce such officer or officers to do and to omit from doing certain acts in violation of his or their lawful duty;"

The said paragraph does not allege and inform the defendants who is meant by the "United States Attorney or an assistant United States Attorney"; what the "questions, matters, causes and proceedings" were concerning which the defendant conspired to influence the decision and action of "an officer of the United States and to persons acting for and on behalf of the United States" and and who were these officers and persons; or what the "certain frauds on the United States" were; nor does the said paragraph describe the certain acts which "such officer or officers" were "to do and to omit from doing in violation of his or their official duty."

The court, in passing on the demurrer, stated:

"The court is of the opinion that while the indictment is somewhat vague and indefinite, nevertheless it does charge the defendants with conspiracy to defraud the United States. However, I am of the opinion now that the defendants are entitled to a bill of

particulars setting forth exactly what is charged and the times, places and persons involved. * * * that it is only right and proper, to lessen their burden of defense and so they may properly prepare, that they know definitely and in particular just exactly what they are charged with. This is not set out as definitely as it ought to be" (R. 160).

Where the indictment leaves a doubt in the mind of the Court concerning the offense intended to be charged it is fatally defective for uncertainty. *Bratton v. United States*, 73 F. 2d 795 (C. C. A. 10).

The Circuit Court of Appeals, in passing on the indictment, said:

"To us it *seems* that the indictment sufficiently apprised the appellants of the charge against them" (R. 1122). (Italics supplied.)

In *McKenna v. United States*, 127 Fed. 88 (C. C. A. 6), the indictment was drawn under a statute punishing a conspiracy to injure, oppress, threaten or intimidate any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution or laws of the United States. The indictment charged that the defendants conspired to injure, etc., certain named persons, male citizens of Kentucky, over twenty years of age "in the free exercise and enjoyment of a right and privilege secured to them." It was held bad as indefinite, in that it failed to state what particular right and privilege was meant, though it continued with recitals that the defendants were officers of an election precinct and conspired "for the purposes aforesaid" and "to carry out and effect the object of the same" failed to open the polls promptly, and

by a tardy discharge of their duties and frequent absences prevented the persons named from voting.

It will be noted in the *McKenna* case, *supra*, the indictment was held bad because it failed to allege what right or privilege was meant though it continued with recitals and means. The instant case is by far worse in failing to name the district attorney or assistant district attorney or the officers, in failing to describe the questions, matters, causes and proceedings, in failing to allege what was the fraud, and in failing to allege what was done or omitted to be done in violation of an official duty.

In *Anderson v. United States*, 260 Fed. 557 (C. C. A. 8), the defendant was convicted and sentenced on an indictment, the charging part of which was as follows:

"That R. Q. Ayers, W. C. Dabney, Melvin Anderson, Gene Johnston, E. L. Edwards, George Booker, Leon Harris, and Leonard Riddick, on the 8th day of November, in the year 1917, in the said division of said district, and within the jurisdiction of said court, did then and there unlawfully, willfully, and feloniously conspire, confederate, and agree among themselves to commit an offense against the United States; that is to say, to steal from a certain railroad freight car certain goods then and there moving as and constituting a part of an interstate shipment of freight, with the intent then and there to convert said goods to their own use."

In holding that the indictment was fatally defective and failed to comply with the rules of criminal pleading, the court at page 558 said:

"The words 'certain railroad freight car' might apply to any one of the vast number of freight cars in

existence in the United States, or in the world, for that matter; and for the same reason the words 'certain goods' might apply to any kind of the thousand varieties of property. The car of goods might be moving in interstate commerce on any railroad in the United States and between any two of the great number of towns existing in different states. The kind and character of the goods are not stated. The word 'steal' as used in the statute, is used as equivalent to the word 'larceny.' In order to constitute the crime of stealing, several elements must be established."

See also: *Pettibone v. United States*, 148 U. S. 197; *United States v. Hess*, 124 U. S. 483; *United States v. Britton*, 108 U. S. 205.

It is respectfully submitted that it is plain that the indictment in this case is fatally defective as being indefinite and uncertain and failing to inform the petitioner of the nature and cause of the accusation, and that the demurrer on this ground should have been sustained.

(b) The indictment charges a conspiracy to commit a substantive offense involving a concert of action and therefore the charge of conspiracy will not lie.

A most casual examination of paragraph 14 will show that it charges a violation of the substantive offense of bribery of a United States officer almost word for word, in the language of Title 18 U. S. C. Sec. 91 an offense necessarily involving concerted action. It is clear that the phrase "that is to say," is not a videlicet marking the termination of the preceding language and all the subsequent matter in this paragraph being part of the same

sentence is correctly to be regarded as an essential part of the charge. *Browne v. United States*, 145 Fed. 1, 5 (C. C. A. 2).

It is plain that the prosecuting attorney in seeking to obtain the liberal rules of evidence incident to a conspiracy charge, was confronted with the difficulty that bribery was in truth the substantive offense asserted to be the object of the conspiracy. Hence, under the authority of *Gibaldi v. United States*, 287 U. S. 112; *United States v. Sager*, 49 F. 2d 725 (C. C. A. 2); *United States v. Hagan*, 27 Fed. Supp. 214 (D. C. Ky.); *United States v. N. Y. C. & H. R. R. Co.*, 146 Fed. 298 (C.C. N.Y.); *United States v. Dietrich*, 126 Fed. 664 (C.C. Neb.) the conspiracy count would not lie. In an obvious effort to avoid the difficulty the prosecutor merely inserted a general characterization of the objective as being the defrauding of the United States. That is a resort to the most flimsy subterfuge.

It is respectfully submitted that the indictment in this case is fatally defective in charging a conspiracy to commit an offense involving a concert of action and that the demurrer on this ground should have been sustained.

VII.

The appointment by the trial court of counsel for one defendant to also represent a co-defendant having adverse interests was a denial of the constitutional right of effective assistance of counsel.

Some time before trial Glasser had retained as his attorney William Scott Stewart. On the day set for trial, counsel for Kretske filed a motion for continuance (R. 173). This motion was denied and another attorney was appointed for Kretske. The following day this was vacated. Thereafter the court appointed Glasser's attorney to represent Kretske over Glasser's objection in person,

stating that he would like to have the exclusive representation of his lawyer (R. 181). Previously Glasser filed an affidavit stating that there was inconsistency in the defense of Glasser and Kretske (R. 171).

Petitioner in the interest of brevity respectfully requests permission to adopt the argument of petitioner Glasser on this point in *Glasser v. United States*, No. 30, and in addition thereto contends that the dual representation so affected the effective representation of Glasser as well as Kretske as to result in prejudice to the petitioner. Since this is a conspiracy case, error committed as to any of the defendants is error as to all. *Logan v. United States*, 144 U. S. 263.

VIII.

The grand jury was illegally constituted because of the deliberate exclusion of women from the jury box from which the grand jurors were selected.

The indictment was filed September 29, 1939 (R. 38). On October 12, 1939, when called for pleas, defendants were granted leave to file motions within twenty days and the cause was continued for pleas to November 30, 1939 (R. 40). A motion to quash (R. 141-149) was filed October 31, 1939 (R. 40). The government made a motion to strike (R. 150). The motion to quash was denied (R. 42).

One of the grounds of the motion to quash was that the federal officials appointed to select grand jurors deliberately excluded all persons of the female sex, on account of their sex, from the jury box from which the grand jurors were drawn, notwithstanding the state law then in effect making it mandatory to include females on jury lists. The affidavit (R. 148) charges that the clerk of the court and the federal jury commissioner refused to follow the state law on the ground that it was not mandatory. It further

charged discrimination and the sufferance of substantial injustice by failure of the officials to follow the state law.

On May 12, 1939, the Illinois legislature amended Section 1 of the so-called "Jury Act" by making it mandatory that women be placed upon the jury list throughout the state (Illinois Rev. Stats. 1939, c. 78, sec. 1, Appendix p. 75), and to the same effect amended Section 2 of the "Jury Commissioners' Act" (Illinois Rev. Stats. 1939, c. 78, sec. 25, particularly applying to counties having a population of 140,000 or more, Appendix p. 76).

This amendatory act, it must be conceded, became the law of the state on the date of its approval by the Governor, namely May 12, 1939, although by virtue of the provisions of the State Constitution, to-wit: Article 4 of Section 13, the act did not become effective until July 1, 1939.

The constitutionality of the amended act was sustained on August 8, 1939 in *People v. Traeger*, 372 Ill. 11.

By virtue of Sec. 412, Title 28 U. S. C., (Appendix p. 75), the clerk of the District Court for the Northern District of Illinois and the appointed jury commissioner are the persons who place in the box the names of the persons from which the grand jurors were selected.

The Circuit Court of Appeals held that the county boards were privileged to wait until September 1, 1939, by virtue of Sec. 1, C. 78, Illinois Rev. Stats. 1939 before including women on the jury lists and since the members of the September, 1939 grand jury were summoned August 25, 1939, there was no irregularity (R. 1118). But a reading of Sec. 1, C. 78 is impelling to the conclusion that county boards were required to act before September 1 to make effective the then existing law. "The county board of each county shall at or *before* the time of its meeting in September, in each year, or at any time thereafter, *when necessary for the purpose of this Act* make a list of a suf-

ficient number . . . of each sex . . . to be known as a jury list." (*Italics supplied.*)

Moreover, the clerk of the court and the federal jury commissioner are not controlled by any state law fixing their meeting time as annually in September. Their position, as charged in the affidavit (R. 148) and admitted by the government's motion to strike (R. 150), was that the law was not mandatory and that they were not required to follow it.

Sec. 411, Title 28, U. S. C. (Appendix p. 74) provides that jurors in the courts of the United States shall have the same qualifications as in the highest court of law in the respective states *when summoned for service* in the courts of the United States. (*Italics supplied.*)

The Circuit Court of Appeals held that there was no prejudice alleged in any way and that the objection was technical, the reason being that grand jurors do not try the case but merely charge the accused (R. 1118).

The crushing effect of an indictment is no light matter and an accused is entitled to the protection of the Constitution and every law and safeguard to prevent him from being put to trial on an indictment unless it is properly found and returned by a properly constituted grand jury.

The selection of a grand jury by the officers, who by law are the only ones vested with that power, is not a mere defect or imperfection in form. It is a matter of substance which can not be disregarded without prejudice to the accused.

Crowley v. United States, 194 U. S. 461.

Hoypt v. Utah, 110 U. S. 574.

United States v. Gale, 109 U. S. 65.

Renigar v. United States, 172 Fed. 646 (C.C.A. 4).

United States v. Lewis, 192 Fed. 633 (D.C. Mo.).

State v. Cantrell, 21 Ark. 127.

Qualifications of Jurors and mode of their selection are matters for the legislature.

Tynan v. United States, 297 Fed. 117 (C.C.A. 9).

Where no attempt is made to comply with the legal method provided for the drawing, summoning, or impanelling jurors, a challenge to the array (or motion to quash) must be sustained even though no prejudice is shown.

People v. Mack, 367 Ill. 481, 487, 488.

People v. Clempitt, 362 Ill. 534.

People v. Schraeberg, 347 Ill. 392.

People v. Fudge, 342 Ill. 574.

People v. Mankus, 292 Ill. 435.

People v. Linquist, 289 Ill. App. 250.

The Illinois State Legislature, having legislated on the qualifications of jurors, and the statute having been construed by the highest court of the state, the statute and the construction are controlling in the United States court.

Pointer v. United States, 151 U. S. 396.

The Clerk of the District Court and the jury commissioner should have followed the Illinois statute when organizing the grand jury and should not have deliberately excluded female jurors. It was then the law of the state that women were qualified jurors.

Crowley v. United States, 194 U. S. 460.

It is respectfully submitted that the motion to quash the indictment on the ground assigned under this point should have been sustained.

CONCLUSION.

The road for an attorney is increasingly a difficult one and there are some who view his every action with suspicion. When one has been in the profession for years and has gained a reputation for integrity by many lawyers engaging him in his field, it is such unfortunate occurrences as the present one that emphasizes the fact that one may lose the fruits of those years of honest labor by being placed in a hostile and prejudicial atmosphere by the evidence permissible under a dragnet type of indictment and subjected to vicious inferences.

There was no evidence that this petitioner conspired with anyone to defraud the United States of the conscientious services of Glasser or anyone else, on the contrary the evidence vindicates him.

The petitioner, a member of the bar of this Court, was tried by a packed jury on a fatally defective indictment in an atmosphere fatal to the proper administration of justice because of the improper and prejudicial conduct of both the judge and prosecutors. He was denied that fair and impartial trial that is the boast of the American system of criminal justice.

Wherefore, it is respectfully submitted that the judgment of the lower court be reversed.

Respectfully submitted,

ALFRED E. ROTH,

September, 1941.

Pro se.

APPENDIX

APPENDIX.

Constitutional Provisions Involved.

Amendment V. to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI. to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U. S. C., Title 18, sec. 88 (Criminal Code, sec. 37):

Conspiring to commit offense against United States. If two or more persons conspire either to commit any offense against the United States, or to defraud the United

States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

U. S. C., Title 18, sec. 91 (Criminal Code, sec. 39):

Bribery of United States Officer. Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to an person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.

U. S. C., Title 28, Sec. 411 (Judicial Code, sec. 275):

Jurors; qualifications and exemptions. Jurors to serve in the courts of the United States, in each State respective-

ly, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.

U. S. C., Title 28, sec. 412 (Judicial Code, sec. 276):

Same; manner of drawing. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

Illinois Rev. Stats. (1939) c. 78, sec. 1:

The county board of each county shall at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct in the county, giving the place of residence of each name on the list, to be known as a jury list.

Illinois Rev. Stats. (1939), c. 78, sec. 25:

The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list. The list may be revised and amended annually in the discretion of the commissioners. The name of each person on said list shall be entered in a book or books to be kept for that purpose, and opposite said name shall be entered the age of said person, his occupation, if any, his place of residence, giving street and number, if any, whether or not he is a householder, residing with his family, and whether or not he is a freeholder."

CHARLES ELMORE CRUPLEY
CLERK

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

No. 32

ALFRED E. ROTH,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY TO BRIEF FOR THE UNITED STATES.

The grossly inaccurate and misleading statements and erroneous conclusions of the Government in its brief compel a reply.¹

GOVERNMENT'S POINT I.—PETITIONER'S POINT IV.

**There was no evidence to support the verdict
against the petitioner.**

The statement of the Government on the first page of the argument (Gov. Br. 11 note 1) "Kretske often referred the

¹To call to the attention of the Court the erroneous, misleading and incomplete statements appearing in the narrative of the evidence in the Appendix pp. 98-152 would unduly burden the Court. Petitioner will therefore in his reply, confine himself to the argument in the body of the brief under point I, pp. 11-32.

prospective defendants to Roth" is incorrect and misleading. There is not one case in the entire record where the petitioner represented any *prospective* defendant. In the three criminal cases referred by Kretske (who at the time was in private practice) and relied upon by the Government, petitioner was engaged as counsel *after* the institution of a prosecution and apprehension of the defendants.

Another incorrect statement by the Government appears on pp. 12-13 Gov. Br. "Petitioners Roth (Br. 50-56) and Glasser (Br. 72-78) have pitched their contentions relating to the sufficiency of the evidence upon only a few isolated and specific cases involved in the conspiracy alleged." This petitioner in his petition pp. 5-10 and in his brief, in the statement of the case pp. 6-12 and in the argument pp. 50-55, has covered the substance of the ultimate facts with relation to him in *every* case on which the Government relies.

Note 5, Gov. Br. 14, which reads as follows: "In one case, involving the Stony Island Avenue still, Kretske, after offering to 'take care' of the case for \$1,200 referred the members of the group to Roth.", is not clearly and fairly stated. *Only the defendants in the particular case* and not the members of the group were referred to Roth and then only as "a lawyer to defend them" (R. 230, 273, 344-345).

Another incorrect and misleading statement by the Government appears on p. 21 Gov. Br. "With reference to the part played by Roth in these cases, the evidence indicated that the Hodorowicz crowd was referred to him by Kretske, * * * and (Roth) also talked to Glasser about the cases, * * *." The Government complains of eight cases in which the Hodorowicz group were involved (Gov. Br. 14). The only case involving this group that Kretske referred to petitioner for trial was the Stony Island Avenue still case where Swanson, Dowiat and Anthony Hodorowicz were named as defendants. See Pet. Br. 6-8. The only other case involving this group where petitioner appeared as defense

counsel was the one in which Frank, Mike and Peter Hodorowicz and Dowiat were co-defendants charged with the illegal sales of alcohol. See Pet. Br. 8-9. In this latter case petitioner was engaged directly by Frank Hodorowicz after indictment (R. 858, 875). This is the only case about which petitioner talked to Glasser when he conferred with him as to his attitude of punishment on a plea of guilty (R. 858). The evidence clearly shows that the petitioner had no connections or dealings of any kind with relation to the other six cases (The 119th Street still R. 225-226, 242-243; the Peter Hodorowicz-Walter Hort case R. 254-256, 265-267, 299, 307; the Walter Hort case R. 267-268, 308-309; the Zarrattini case R. 304-306; the Clem Dowiat case R. 269-270; the 118th Place still R. 258-259, 276-277, 296-297).

Finally in the summary on this point (Gov. Br. 31) the Government again resorts to incorrect and misleading statements as follows: "The latter (potential defendants) were directed, usually by Horton, to Kretske. Kretske, in turn, suggested his ability 'to fix' the case and solicited money, announcing it was to go to Glasser. Kretske then referred the matter to Roth. Thereafter, except where payment had been refused or where the evidence indicated Glasser found he must proceed because of pressures, the case, in one way or another, died."

No potential defendants were ever referred to petitioner. Kretske did not refer to petitioner all his cases, or any matter dealing with alleged "fixing" as the above might imply. He did refer to petitioner *actual defendants* (R. 230, 700, 701, 861, 547, 857, 868) in three criminal cases to represent them on their respective trials. See Pet. Br. 6-8. He also referred the claimant in one civil case, after seizure by the Government of her automobile (R. 838, 874) to represent her on the trial in a libel action. See Pet. Br. 6.

The cases in which petitioner appeared as defense counsel have not in "one way or another died." In the four cases

referred by Kretske to the petitioner to be tried the results were as follows :

1. United States v. Swanson, Dowiat and Anthony Hodorowicz (Stony Island Avenue still).²

When petitioner together with his clients appeared in court on the set date ready for trial he learned the case had been stricken with leave to reinstate a week prior thereto (R. 236, 837). The uncontradicted testimony of Glasser is that this was done at the direction of the Government agent in charge of the investigators who advised Glasser they did not have sufficient evidence to convict³ (R. 918-920).

2. United States v. Edward Dewes.

This case was continued several times because of the illness of Attorney Anderson who represented a co-defendant. Anderson finally became disabled (R. 823-824, 827) and his associate substituted for him during the preparation and trial of the case (R. 764-765, 827). Dewes was convicted and sentenced to the penitentiary⁴ (R. 555, 857-858).

3. United States v. Harry Dukatt.

In a hearing before a United States Commissioner Dukatt was discharged. Subsequently two indictments were re-

²The Government seeks to infer wrong doing with relation to the petitioner merely because the case was referred to the petitioner (who specialized in federal practice) to be tried. The petitioner prepared and appeared for hearing before the United States Commissioner and after indictment of his clients prepared and was ready for trial in the district court. See Pet. Br. 6-8.

³The record discloses the case as never having been reinstated (Ex. 226, R. 1034) with Glasser out of office a year and, therefore, is *still* pending.

⁴The Government does not argue this case with relation to petitioner.

turned against him and he entered a plea of guilty to both of them and was sentenced to the penitentiary⁵ (R. 700-701).

4. United States v. One Chrysler Sedan.

This case was called for trial and submitted to District Judge Barnes on the alcohol tax unit agent's report (R. 717-718. See also R. 881-882). Judge Barnes ordered the car returned to the claimant.⁶ See Pet. Br. 50-51.

The other cases in which petitioner appeared as counsel are as follows:

1. United States v. About 151 Acres of Land, etc.

This case was referred to petitioner by Attorney Baker to prosecute an appeal on behalf of the claimants who lost in the District Court (R. 749). The judgment of the District Court was reversed 99 F. 2d 716.⁷

⁵The Government does not argue this case.

⁶The argument of the Government with relation to the petitioner in this case is "Without contradiction by Glasser, who represented the Government, Roth, counsel for Vitale's wife, stated at the hearing that Vitale was 'O.K.' and that the car was not used for illegitimate purposes." (Gov. Br. 29). It is ridiculous to assume that the petitioner who was experienced in the procedure and trial of libel cases (R. 749, 871-874) should introduce the character or reputation of the claimant's husband. While it was immaterial to the issues in a proceeding in *rem* to forfeit the car, it may be noted in passing that Judge Barnes was informed that the claimant's husband was a bootlegger. Judge Barnes testified that he remembered the case and that the claimant was the wife of a bootlegger (R. 717). It was not only entirely proper but the duty of the petitioner to state the position taken by his client in her sworn pleading, namely, that her car was not used for illegitimate purposes.

Petitioner does not know Leo Vitale (R. 874). Attorney Spatuzzo represented Leo Vitale in his criminal case (Ex. 165, R. 1034).

⁷The Government does not argue this case.

2. **United States v. Paul Svec.**

Petitioner represented Svec in two cases. In the first one he was convicted and sentenced to the penitentiary and appealed (R. 557, 854). While he was at liberty on an appeal bond he was arrested and after a full hearing before the United States Commissioner, was discharged (R. 557, 559). On appeal his conviction was affirmed (*United States v. Sebo*, 101 F. 2d 889).⁸

3. **United States v. Frank, Mike and Peter Hodorowicz and Dowiat.**

Petitioner appeared on arraignment of the defendants and entered their pleas of not guilty (R. 710, 859). After conferring with Glasser as to his attitude on pleas of guilty and advising his clients that Glasser's attitude was that he would insist on a substantial penitentiary sentence he was substituted by another lawyer (R. 858, 859). On the trial all the defendants were convicted and sentenced (R. 312).⁹

⁸The Government does not argue the Svec cases with relation to the petitioner.

⁹The Government argues (Gov. Br. 21) that Frank Hodorowicz retained other counsel at the suggestion of Roth after he had seen Glasser and that this was particularly significant in the light of Roth's efforts at the trial below, to show that he was an expert in handling cases in the federal courts. This rare bit of reasoning would subject every lawyer to the ignominy of indictment if he suggests that a client engage other counsel because of refusal to follow his advice. In this case petitioner was of the opinion that as to three defendants a trial would be futile (R. 858). He conferred with Glasser as to his attitude on a plea of guilty which was proper and is the daily practice in the interest of economy to both defendants and the Government. The report to his clients that the attitude of Glasser on a plea of guilty was that he would insist on a substantial penitentiary sentence obviously did not meet with their approval so petitioner suggested to Frank Hodorowicz that he better get some other lawyer to try the case. Vindica-

Recapitulating the disposition of all the criminal and civil cases handled by petitioner about which the Government complains:

Criminal—

One still pending;

Convictions and sentences in all others (except discharge of Svec in a hearing in the case before Commissioner).

Civil—

Final judgment in District Court in one case;

Reversed by Circuit Court of Appeals in the other.

The argument of the Government (Gov. Br. 29-30) concerning the testimony of Alexander Campbell that petitioner asked Campbell if something could be done about not indicting Edward and William Wroblewski in the Northern District of Indiana is inane—as the testimony of Campbell is inherently incredible and contradicted since

tion of the advice of petitioner is found in the fact that all the defendants in this case were convicted (R. 312) and on appeal all convictions were affirmed (105 F. 2d 218, 220, cert. denied 308 U. S. 584, 585).

Frank Hodorowicz, variable in his choice of lawyers, shopped around, going so far as to call on Glasser to try to have him recommend one (R. 302). He called on Mr. Deneen (R. 332). He hired Mr. Hess to try his case (R. 334). He hired Mr. Struett to appeal his case (R. 334).

The Government argues that petitioner examined “the papers” in Glasser’s office (Gov. Br. 18). Obviously, “the papers” referred to are the two indictments in the case when petitioner after engagement by Frank Hodorowicz and the filing of his appearance conferred with Glasser as to his attitude on a plea of guilty (R. 858). The garbled and confused testimony of Frank Hodorowicz (R. 311) that petitioner “with Kretske” examined “the papers” is as convincing as his testimony that petitioner was not present as his lawyer in court on his arraignment. See Gov. Br. 19, note 12. Indeed, the Government concedes that he is a confused witness (Gov. Br. 104, note 7).

at the time of the alleged conversation with Campbell, Edward and William Wroblewski *were already under indictment* for five months in the Northern District of Indiana (Exhibit 186-B, R. 840). Edward and William Wroblewski were then under bond to appear in court to answer to the indictment (Exhibit 186, 186-A, B & C, R. 840) which fact *was known* to the petitioner (R. 635, 676-677, 838-840). See Pet. Br. 10-12. It is contrary to reason to contend that petitioner who had experience in handling cases in the federal court (R. 796, 749, 782, 783, 833-834, 889, 890) would try to make an arrangement to prevent the return of an indictment which *he and his clients knew had in fact been returned five months before* the alleged conversation.

The incredible testimony of Alexander Campbell is further emphasized by his testimony that petitioner came to Indiana to ask him, virtually a stranger to petitioner, to "pull off" the investigator in the instant case working out of Chicago in the alcohol tax unit (R. 646) over whom Campbell would have no jurisdiction whatsoever.

Nevertheless, all the Alexander Campbell testimony (R. 680-685) was highly prejudicial and erroneously admitted over specific objections (R. 678-680, 717) as declarations made in pursuance and part of the execution of an alleged conspiracy to defraud the United States of the conscientious service of Glasser in the Northern District of Illinois. *United States v. Logan*, 144 U. S. 263, 308; *Collenger v. United States*, 50 F. 2d 345, 348 (CCA 7); *Mayola v. United States*, 71 F. 2d 65, 67 (CCA 9); *Minner v. United States*, 57 F. 2d 506, 511 (CCA 10).

It is clear that the evidence in this case fails utterly to show that petitioner was a party to any common design or agreement between the alleged conspirators. The Government's vague theory of the case was that "there was a conspiracy on foot to solicit certain persons to make

promises" (R. 154). There was no evidence of any kind, either direct or indirect, that petitioner solicited any person or made any promises to "fix" any case or that he conspired with anyone to defraud the United States of the conscientious service of Glasser or any one else.

The Government relies on circumstantial evidence to prove petitioner guilty of conspiracy (Gov. Br. 12), but the circumstances relied upon as a basis for such inference by the jury, must not only be consistent with the guilt of the petitioner, but must be inconsistent with every other reasonable hypothesis of innocence on his part. *Paddock v. United States*, 79 F. 2d 872, 876 (CCA 9); *Gargotta v. United States*, 77 F. 2d 977, 981 (CCA 8); *Nicola v. United States*, 72 F. 2d 780, 786 (CCA 3); *Romano v. United States*, 9 F. 2d 522, 524 (CCA 2).

The evidence in this case merely shows that petitioner appeared as defense counsel in a few cases, some of which were referred to him by Kretske, and that Glasser appeared in court as his adversary. Obviously, any testimony of the mere payment of money by third persons to alleged co-conspirators, accompanied by their hints, innuendoes, or statements, as to corruption of Glasser, gives rise to no legitimate inference that Roth was a party to any conspiracy. *United States v. Falcone*, 311 U. S. 205, 210-211.

"When the proof rests on circumstances which lead as rationally to the conclusion of innocence as of guilt, there is no proof of guilt, and nothing to go to the jury. Juries are not permitted in civil cases to speculate as to the negligence of the defendant (*A., T. & S. F. Ry. Co. v. Toops*, 281 U. S. 355, 50 S. Ct. 281, 74 L. Ed. 896 and cases there cited); they should not be permitted to guess at the guilt of the defendant in a criminal case." *Leslie v. United States*, 43 F. 2d 288, 290 (CCA 10).

Even on the basis of its incorrect and misleading statements, the Government concedes that the jury could have acquitted the petitioner under the evidence (Gov. Br. 12). Petitioner was therefore entitled to an acquittal and the trial court should have granted his motion for a directed verdict (R. 1042-1044).

As was said in *Cochran v. United States*, 41 F. 2d 193, 206 (CCA 8):

"If, as conceded by counsel for the government, the jury might have acquitted him without being inconsistent with this record, then the circumstances proven are not inconsistent with the theory of his innocence and his guilt has not been proven by sufficient evidence beyond a reasonable doubt. The lower court should have granted his motion for a directed verdict."

CONCLUSION.

Wherefore, it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

ALFRED E. ROTH,
Pro se.

November, 1941.



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CHARLES ELMORE DODDLEY

CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 31

NORTON I. KRETZKE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR REHEARING

EDWARD M. KEATING,
10 South La Salle Street,
Chicago, Illinois.

Counsel for Petitioner.

JOSEPH R. ROACH,
Of Counsel.

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OCTOBER TERM, A. D. 1941.

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NORTON I. KRETZKE,

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UNITED STATES OF AMERICA.

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR REHEARING

Your petitioner, Norton I. Kretzke, presents this, his petition for rehearing, and respectfully submits to the court that, after a most careful study of the opinion of this honorable court, petitioner Kretzke is impelled to the conclusion that certain important and material matters in the record respecting the proceedings before the trial have been overlooked by the court, and that certain important and material facts at the trial have

been overlooked and misapprehended in the opinion, and that the application of the law to the case in certain important respects has not been correctly made in the opinion, and that vital and material propositions necessary to a correct decision were not considered in the opinion.

This petitioner will not burden the court with arguments with respect to all of his contentions made in his original brief, but without waiving his position with respect to those propositions not covered herein, he respectfully asks leave to discuss in this petition some of the matters with respect to which he believes brief discussion will persuade the court to grant a rehearing. Petitioner, therefore, respectfully petitions for a hearing of said cause and in support of said petition respectfully shows the following:

I.

THE COURT IN FORCING THE SERVICES OF ATTORNEY STEWART UPON KRETZKE OPERATED FAR MORE PREJUDICIALLY AGAINST KRETZKE THAN AGAINST GLASSER, AND THEREFORE THERE SHOULD BE A REVERSAL AS TO KRETZKE.

All reasons urged by the court for the reversal of the judgment against Glasser applies even with more force to the proposition that the judgment against Kretzke should be reversed. At the very outset of the trial Kretzke's lawyer, who had prepared this long and intricate case for trial, was unable to represent him and withdrew from it. Another attorney who had no knowledge of this case was appointed by the court to represent

him. The petitioner objected to the services of this attorney. The court asked Attorney Stewart who had prepared the case for Glasser to act as Kretzke's lawyer. Stewart stated that the defense, in his opinion, at certain points would clash. The court stated in answer to this suggestion of Stewart that it thought that the effect of Stewart's representing Kretzke would have a favorable effect upon the jury, operating in favor of Kretzke. Glasser suggested an objection to Stewart representing Kretzke. The court then forced the lawyer whom Kretzke rejected upon him, saying: "Mr. McDonnell, you will have to stay in this case until he gets (meaning Kretzke) another lawyer, if he isn't satisfied with you," and then ordered the selection of the trial jury. In the face of this dire emergency the petitioner accepted Stewart as his counsel and the trial proceeded. Upon these facts it cannot be maintained that petitioner waived his right to be represented by disinterested counsel. It is clear that he was coerced by the circumstances and the attitude of the court into taking Stewart. This seems to appear from the language of the court:

"No such concern on the part of the court for the basic rights of Glasser is disclosed by the record before us. The possibility of the inconsistent interests of Glasser and Kretzke was brought home to the court, when instead of jealously guarding Glasser's rights, the court may fairly be said to be responsible for creating a situation which resulted in the impairment of these rights. For the manner in which the parties accepted the appointment indicates that they thought they were acceding to the wishes of the court. Mr. Kretzke said this appointment could be accepted 'if your Honor wishes to appoint him (Stewart)' and Stewart immediately replied: 'As long as the court knows the situation. I think there is something in the fact that the jury knows that we cannot control that.' The court made no effort

to ascertain Glasser's attitude or wishes. Under these circumstances, to hold that Glasser really, albeit tacitly, acquiesced in the appointment of Stewart is to do violence to reality and to condone a dangerous laxity on the part of the trial court in the discharge of its duty to present the fundamental rights of the accused."

This reasoning applies with far greater force to Kretzke than to Glasser, for Glasser had a choice in the matter. Not so with Kretzke. He had either to accept Stewart or to go without representation, or take such as under the circumstances was tantamount to none at all.

Among the items listed by the court as depriving Glasser of the proper assistance of counsel was the failure of Stewart to cross-examine the witness, Brantman. Brantman testified primarily against Kretzke, not against Glasser. Kretzke was far more injured by the failure to cross-examine Brantman than was Glasser.

The court then proceeded to argue that while the violation of Glasser's constitutional rights in the above respect requires a reversal as to him, it does not require such as to the other defendants and cites authorities to sustain this view. However, they did not seem to be in point. *Agnello v. U. S.*, 269 U. S. 20 (cited in opinion as 296 U. S. 20) holds that the admission in a prosecution against several conspirators of evidence obtained by the unconstitutional search of the premises of one of them does not require the reversal of the conviction of others, where the court instructed the jury that the evidence was admissible against the one on whose premises it was found. The accused requested no instructions in reference to the matter. *U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150, holds that new trials may be granted to some defendants while denying them to others in the prosecution

under the Federal Anti Trust Act for combining to control prices, when the finding of the jury that the acts of the defendants affected prices was not necessarily dependent upon the participation of all the defendants. *Rossi v. United States*, 278 Fed. 349, holds that where an indictment charged a conspiracy between the defendant and others named and others unknown, the granting of a new trial to one of the accused's confederates did not entitle him to a new trial. The same holding is to be found in *Belfi v. U. S.*, 259 Fed. 822, and *Brown v. U. S.*, 145 Fed., both cited by the court in support of its position.

We do not believe these cases to be in point, but consider the subject controlled by a different line of authority such as *Logan v. U. S.*, 144 U. S. 363, and *Wheaton v. U. S.*, 113 Fed. 710 (C. C. A. 3rd).

In the first case the Supreme Court in stating and applying the doctrine here contended for, at page 309, 144 U. S., said:

"There being other evidence tending to prove the conspiracy, and any acts of Logan in pursuance of the conspiracy being therefore admissible against all the conspirators as their acts, the admission of incompetent evidence of the acts of Logan prejudiced all the defendants and entitles them to a new trial."

We submit that upon the reasoning of the court in regard to the admission of this evidence against Glasser and applying the same to the situation of Kretzke that error of such palpable and prejudicial character results as to cause the court to consider same under rule stated by this court in such cases as *Weborg v. U. S.*, 163 U. S. 632, 658; *Elgatt v. U. S.*, 197 U. S. 207, 221; *Crawford v. U. S.*, 212 U. S. 183, 194, and *Wcems v. U. S.*, 217 U. S. 349, 362, and reverse Kretzke's conviction.

II.

ADMISSION OF THE TESTIMONY OF ALEXANDER CAMPBELL WAS REVERSED ERROR AGAINST KRETZKE.

In the paragraph on page 15 of the opinion we find this disposition of what petitioner assigned and urged as prejudicial error:

"No reversible error was committed by overruling objections to the testimony of Alexander Campbell with relation to the dealings with Roth. Trial judges have a measure of discretion in allowing testimony which discloses the purpose, knowledge or design of a particular person. *Butler v. United States*, 53 F. (2d) 800; *Simpkins v. United States*, 78 F. (2d) 394, 598. We do not think the bounds of that discretion were exceeded here. The statements of Roth were not in furtherance of the conspiracy, but they did tend to connect Roth with it by explaining his state of mind."

This petitioner assigned the admission of this testimony against him as error in his petition for certiorari (Pet. 8) and discussed and argued it in his brief (Brief 11, 82), citing authorities in support of his contention. The Government in its brief never noticed the point. The petitioner devoted his entire reply brief to a further discussion of this point. He contended (1) that the testimony was not admissible as to him for any purpose; and (2) that if it was so admissible, the testimony was of such a vague and uncertain character as to destroy its admissibility. Many cases were cited seeking to sustain these respective contentions. We respectfully submit that the statement of the court in this opinion would render reversal under the first proposition imperative. The language of the opinion is "the statements of Roth were not

in furtherance of the conspiracy, but they did tend to connect Roth with it by explaining his state of mind." The petitioner specifically objected to the testimony as regards himself, but the court admitted it to operate against him. Roth's state of mind in regard to the widely separated transaction certainly could not have the slightest probative tendency to show that the petitioner was guilty of the conspiracy charged in the indictment. The evidence was highly prejudicial in its application against the petitioner. A reconsideration of the authorities cited by him on this point seems to give this proposition all necessary support.

III.

PREJUDICIAL ERROR WAS COMMITTED AGAINST KRETZKE THROUGH THE ADMISSION OF EXHIBITS 81A and 113 AGAINST GLASSER.

We believe the court to be in error in holding that the admission of Government's Exhibits 81A and 113 was not reversible error as to the petitioner. If they were not admissible against Glasser, their admission would be such prejudicial error against Glasser as to require a reversal as to Glasser, and such being the case such admission would likewise be a reversal error against Kretzke. *Logan v. U. S.*, 144 U. S. 363, and *Weadon v. U. S.*, 113 F. (2d) 710, *supra*. In support of this position we adopt and quote from Glasser's brief, pp. 38-42:

"A full appreciation of the effect they must have had on the jury cannot be obtained without examination of these reports. Therefore, these original exhibits have been forwarded and are now on file in the office of the Clerk of this Court.

Exhibit 81A is an elaborate report of 25 pages containing first a 'Chronological Narrative History'

appearing to state established facts. Following this under the heading 'Testimony of Witnesses', there are set out at length the statements purportedly made to the agent by each of a large number of witnesses concerning the accused persons.

Exhibit 113 is almost identical in format except that much of the 'Testimony of Witnesses' is enclosed in quotation marks, thus adding to the prejudicial effect upon the jury. Not to be forgotten is the fact that in each of these reports Kaplan, one of the defendant alleged co-conspirators with petitioner, is referred to as the apparent organizer of the illicit distillery project there involved.

The feeble argument of the government is (Br. in Opp. p. 30):

These reports were of course not offered for the purpose of proving the commission of the liquor violation therein described, but *to show what Glasser had before him* when he acted in these cases. (Italics supplied.)

This can mean any of three things:

(1) That the report was offered to show that a report as to law violation by these defendants had been made to Glasser. But this cannot stand since the fact had already been established by testimony of witnesses and by the evidence that Glasser had presented the cases to grand juries (R. 528-532).

(2) That, irrespective of the truth or falsity of the statements contained therein, such statements had been made. But if the correctness of these statements be not assumed by the jury, then Glasser equally was entitled to treat them as false, and if so, of course they failed to show that anything was before him and were no criteria by which to measure Glasser's conduct.

(3) That all statements contained in the report were substantially true and therefore to be treated as evidence available to Glasser, and upon the existence of which Glasser's failure to obtain more indictments was to be appraised. This, of course, was in fact the sole purpose for which they were offered

by the government, and the jury was plainly intended to accept them as evidence of the existence of the facts therein stated. Nor was their introduction inadvertent; it was deliberate and purposeful after much verbal maneuvering (R. 446-451), and the reports were submitted to the jury as exhibits to be taken to the jury room with calculated regard to their effect. The record shows that the complete text of Exhibit 81A, together with the statements given by the various witnesses in connection therewith, was read to the jury (R. 533). While Exhibit 113 was not read to the jury, they were told in specific terms where they could find the chronological narrative, the list of witnesses, and the 'available' evidence against each defendant involved in the operation of the still (R. 539-540). Indeed, the Government tacitly admits that these reports were submitted as proof of the facts stated therein, by relying on them and in citing to them as follows (Br. in Opp. pp. 6, 9):

Available evidence was not used by Glasser upon these presentations (R. * * * 602).

The record discloses many instances of Glasser's failure to utilize available information and evidence in securing indictments * * * (R. * * * 602, 609).

Thus the government by these record references to the report in the Spring Grove case asserts in this case that such reports were 'evidence.' This attempt to evade the hearsay rule under the appearance of an exception thereto, is a subterfuge probably as old as the rule itself. It is the same evasion which was recently met by the stern refusal of this Court to lend the slightest countenance to a sophism so plainly at war with preservation of the basic elements of fair trial. *Shepard v. United States*, 290 U. S. 96. There, with language peculiarly applicable to the attempted rationalization of the Circuit Court of Appeals that (R. 1132):

The information contained in the reports * * * threw light upon the question
this Court said (p. 104):

This fact, if fact it was, the government was free to prove, but not by hearsay declarations. It will not do to say that the jury might accept the declaration for any light that they cast upon the existence of a vital urge, and reject them to the extent that they charged the death to someone else.

Applying the holding of the *Shepard* case here, it is plain that it will not do to say that the jury might accept the report and statements contained therein for any 'light' that they cast upon the question of whether reports of this law violation had been made to Glasser, and reject them to the extent that they tended to show the evidentiary facts of such violation. *United States v. Perlstein*, 120 F. (2d) 276, 282-283.

As this Court said in the *Shepard* case (p. 104):

Discrimination so subtle is a feat beyond the compass of ordinary minds. * * * It is for ordinary minds, and not for psychoanalysts, that our rules of evidence are framed. They have their source very often in considerations of administrative convenience, of practical expediency, and not in rules of logic. When the risk of confusion is so great as to upset the balance of advantage, the evidence goes out.

Furthermore, it is well established that in the presentation of evidence before a grand jury it is incumbent upon the prosecuting attorney to see that only competent evidence is introduced. *United States v. Farrington*, 5 Fed. 343, 347; *In re Grand Jury*, 62 Fed. 840, 846. As was said in *United States v. Kilpatrick*, 16 Fed. 765, 771:

The prosecuting officer is presumed to be familiar with the rules of evidence and it is his duty to take care that no evidence is received by the grand jury which would not be admissible in a court upon the trial of a cause. 1 Whart. Crim. Law, Sec. 493.

Therefore these statements of alleged facts contained in these reports were available as a measure

of Glasser's duty only if made by the witnesses themselves—not in mere reports. As said by Mr. Justice Field, in charging a grand jury in California (*Charge to Grand Jury*, 30 Fed. Cas. No. 18,255, at p. 993):

In your investigation you will receive only legal evidence to the exclusion of mere reports, suspicions and hearsay evidence.

All these principles are well established, and applicable here. Yet the government would deprive petitioner of his right of confrontation on the stated ground that the reports showed 'what Glasser had before him' (Gov. Br. in Opp., p. 30)."

This error could not be cured by any subsequent instructions to the jury.

Waldron v. Waldron, 156 U. S. 361, 39 L. Ed. 453.

Throckmorton v. Holt, 180 U. S. 552, 55 L. Ed. 663.

Holt v. U. S., 94 Fed. (2d) 90, 94 (C. C. A. 10).
C. M. Spring Drug Co. v. U. S., 12 Fed. (2d) 852.

CONCLUSION.

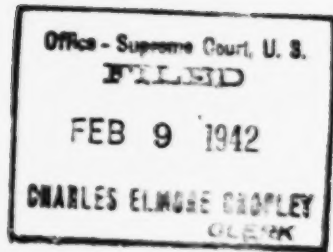
In conclusion we respectfully submit that by reason of the foregoing matters the petition for rehearing should be granted.

Respectfully submitted,

EDWARD M. KEATING,
Attorney for Petitioner.

JOSEPH R. ROACH,
Of Counsel.

FILE COPY



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 32

ALFRED E. ROTH,
Petitioner,

VS.

THE UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Circuit
Court of Appeals for the Seventh Circuit.

PETITION FOR REHEARING.

ALFRED E. ROTH,
10 N. Clark St.,
Chicago, Illinois,
Pro Se.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 32

ALFRED E. ROTH,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Circuit
Court of Appeals for the Seventh Circuit.

PETITION FOR REHEARING.

If the judgment in this case is to stand, then petitioner must be added to the unfortunate victims whose cases are recorded in Borchard's "Convicting the Innocent".

This case proves that all too frequently the blindfold worn by the symbolical figure of Justice is merited.

Petitioner protesting his innocence, insists that a great injustice has been done him in the affirmance of the judgment. This case carries with it graver and more serious consequences than the execution of the judgment, and he exhorts this honorable Court to reconsider this case which conclusively establishes his innocence.

This Court has not only overlooked and misapprehended the facts but has misconstrued the established law and the facts established by the record. Erroneous inferences are drawn from the evidence in sustaining the case against Roth.

Without waiving all his contentions made in the original brief, petitioner presents this petition for a rehearing and in support of same respectfully shows the following:

I.

THERE IS NO EVIDENCE AGAINST ROTH.

The Government frankly concedes that (Gov. Br. 6) "the questions concerning the guilt of the petitioners, Glasser and Roth, depend upon a development and collocation of circumstances necessary to support the verdict". The opinion at page 4 quotes the concession as to Glasser only. The concession of the Government is significant in relation to Roth's contentions (as well as Glasser's, which were recognized by this Court) that error intervened to his prejudice in the many particulars urged. As stated in the opinion, page 5: "In all cases the constitutional safeguards are to be jealously preserved for the benefit of the accused, but especially is this true where the scales of Justice may be delicately poised between guilt and innocence. Then error, which under some circumstances would not be ground for reversal, cannot be brushed aside as immaterial since

there is a real chance that it might have provided the slight impetus which swung the scales toward guilt." This rule must be applied to a consideration of Roth's case as well as Glasser's.

The opinion at page 4 states:

"The indictment charges that the United States was defrauded by depriving it of its lawful governmental functions by dishonest means;"

and at page 12 states: "The evidence against Roth discloses the following salient facts," and then reviews five cases in which Roth appeared as counsel for defendants with Glasser representing the Government. We will take up these cases in the order as they appear in the opinion and demonstrate that the facts have been misapprehended and misconstrued.

1. The opinion says at page 12:

"Elmer Swanson, Clem Dowiat, and Anthony Hodorowicz, were arrested in connection with a still on Stoney Island Avenue. Frank Hodorowicz, the head of the Hodorowicz crowd, arranged a meeting with Kretske at his hardware store to 'take care' of the case. Horton was present and Kretske told the group that there was a lot of 'heat' on the case but that it could be arranged so that nobody 'would go to jail' for \$1200, part of which 'Red' was to get. A down payment of \$500 was made. When a lawyer was sought, Kretske referred the prospective defendants to Roth. He represented them at the hearing before the Commissioner which was continued at the request of Glasser. After an indictment was returned, Roth appeared for trial to find that the case had been stricken from the docket with leave to reinstate it. The defendants were never brought to trial. None of the Hodorowiczes or their associates paid Roth for his services. Roth testified that he received his fee from Kretske." (Emphasis supplied.)

What did Roth do in this case? He accepted the employment of a referred case by another lawyer who paid him for legal services rendered. He appeared before the Commissioner ready for a hearing. On motion of Glasser and over the vigorous objection of Roth (R. 295), the defendants were denied and deprived of their rights to a preliminary hearing (See Pet. Br. 6-8). Roth prepared and appeared in the trial court ready for trial and then and there learned the case had been stricken with leave to reinstate without notice to him (R. 235-236, 837, 918-920).

And it must be remembered that not one of the clients nor anyone else testified to any misconduct or statements by or in the presence of Roth concerning any alleged unlawful conspiracy.

The opinion in reviewing the evidence against Glasser obviously does not deem worthy of mention his conduct in not bringing the defendants to trial and the striking of the case with leave to reinstate at the request of the alcohol tax unit agent in charge because of lack of evidence. **Why then indulge in inferences against Roth?**

The implications in the opinion are illogical if the presumption of innocence means anything.

"The presumption of innocence is a maxim which ought to be inscribed in indelible characters in the heart of every judge and jurymen. * * * To overturn this, there must be legal evidence of guilt, carrying home a decree of conviction short only of absolute certainty." *Coffin v. United States*, 156 U. S. 432, 456.

There is nothing in this transaction furnishing the slightest indication of guilt of the charges in the indictment on the part of Roth.

2. This Court at page 12, reviews another case in which Roth appeared as defense counsel and says:

"In June 1938 Glasser secured two indictments, one against Frank, Mike, and Peter Hodorowicz and Clem Dowiat, and the other against Frank, and Peter Hodorowicz, and Dowiat for the sale of illicit alcohol. Frank paid Ketske \$250 after the indictments. Kretske later told him that nothing could be done as investigator Bailey was pressing Glasser. Frank then went to see Roth, who with Kretske went to see Glasser. Roth later told Frank that nothing could be done and suggested that he get an attorney and prepare to defend himself. Roth's explanation of this was that he went to Glasser to learn the latter's attitude toward clemency for Frank, and that he suggested the retention of two lawyers, one to defend Frank, and the other to represent the remaining defendants. Frank dispensed with Roth's services and was represented at the trial by one Hess. Frank paid Roth \$50, but this was in connection with substituting some securities on his bond." (Emphasis supplied.)

The opinion has misconstrued and misinterpreted the evidence in respect to this case. No clemency or favor was sought from Glasser and there is no support in the record for this statement. Roth was of the opinion that as to at least three of the defendants, a trial would be futile (R. 858), and went to see Glasser on his attitude as to punishment on a plea of guilty. Roth reported to his clients that Glasser would insist on a substantial penitentiary sentence. Not satisfied with Roth's advice, as to pleas of guilty, other counsel was employed. Vindication of Roth's advice is found in the fact that all defendants were, upon a trial, convicted (R. 312).

Why is the evidence insignificant as to Glasser and significant as to Roth?

Obviously the evidence proves nothing as to either Roth or Glasser and this Court makes no mention of it in reviewing Glasser's conduct at page 10 of the opinion.

The conduct of Roth in this case is consistent with the conscientious and honest services of a lawyer.

3. This Court at pages 12-13 reviews another case in which Roth appeared as defense counsel and says:

"Edward Dewes had been associated with the defendant Kaplan in a still at Spring Grove. That case was twice presented to a grand jury by Glasser but withdrawn on each occasion. Two days before it was presented a third time the defendant Horton told Dewes that Kretske wished to see him. Dewes went to Kretske's office and paid him \$100 so that he would not be indicted. Dewes was no-billed in that case. Dewes was also involved in a still on the farm of one Beisner. It was raided and several were arrested. Dewes, Victor Raubunas and Edward Farber asked Horton to 'fix' that case, but when his price was thought too high, Farber, who had known Kretske for some time, took Dewes and Raubunas to Kretske's office. Kretske offered to take care of the case for \$1200. Raubunas paid \$300 and they were told they would need no lawyer at the preliminary hearing. Eventually Raubunas, Dewes and Beisner were indicted. Dewes thereafter paid Kretske \$275 to 'fix' his case. **Kretske referred the matter to Roth who represented Dewes throughout his trial. Dewes testified that he neither retained nor paid Roth.**" (Emphasis supplied.)

After indictment of Dewes, Roth was retained by Attorney Kretske to represent Dewes throughout his trial and received his compensation from the forwarding attorney. Dewes was convicted and sentenced to the penitentiary (R. 555, 857-858).

If trying a case for another lawyer is per se evidence of criminal conduct, then every trial lawyer accepting such employment may just as well voluntarily surrender his license to practice law lest he subject himself to the ignominy of indictment, prosecution, and conviction for a crime for so doing.

Other than the representation of Dewes after being retained by Attorney Kretske there is no connection whatsoever between Roth and all the other facts set out in the opinion. This Court must have misapprehended a connection of Roth to the other facts in order to marshall them as salient facts against him. The Government did not even see fit to argue this case against Roth.

There is no evidence of any guilt on the part of Roth in connection with his conduct as a lawyer in this case.

4. Reviewing another case involving one Paul Svec represented by Roth as defense counsel at page 13, this Court said:

"Paul Svec, an associate of one Yarrio, was arrested in 1937 for a liquor violation. Horton arranged his bond. In Svec's presence Horton picked up Kretske and Yarrio. They told Svec not to worry. He was thereafter indicted and convicted. While at liberty pending an appeal he was again arrested. This time he called Glasser, and according to the latter, offered him money. The following morning Glasser interrogated Svec in the hearing of a secreted agent of the Federal Bureau of Investigation and secured admissions that Svec had never paid Glasser money or received any promises from him, and that the call had been at the instigation of the arresting investigators. Svec testified that Roth told him he 'stood up O. K.' under Glasser's questioning. Svec was discharged at the Commissioner's hearing." (Emphasis supplied.)

In this case, Roth was engaged directly by Svec to try both of his cases. Kretske did not refer these cases to Roth.

The Government did not see fit to argue this case against Roth but in the opinion, however, a strained inference is drawn against Roth because Svec testified that Roth told him he "stood up O. K." under Glasser's questioning. If it is criminal for a lawyer to make comment to his client that he did well under questioning by a prosecutor while detained in his office, then the legitimate right of consultation between attorney and client exists no more. It must be remembered that Svec testified that he never tried to "fix" a case or had one "fixed" (R. 559, 565, 566).

It is clearly an erroneous implication and interpretation to marshall as a salient fact the mere use of the vernacular of a bootlegger to express the substance of a statement that he did not involve himself, remembering that he was in custody under arrest for an offense awaiting a hearing.

5. This Court then at page 13, reviews the cases of Leo Vitale and Rose Vitale.

"Glasser prosecuted Leo Vitale for the operation of a still. He was convicted and received a sentence of one hour in the custody of the marshal. Vitale's wife, Rose, was the claimant in the subsequent libel action against a car allegedly used to transport illicit liquor. The case was referred to Roth by Kretske. Roth informed the Court that Vitale was 'O. K.' and that the car was not used for illegal purposes. As was the custom, the case was tried on the agent's report. It was dismissed. Investigator Dowd later informed Glasser that he had heard that Vitale had boasted that 'he got out of this for nine hundred dollars'." (Emphasis supplied.)

CASE OF LEO VITALE.

This Court erroneously marshalled as a salient fact against Roth the case of Leo Vitale.

In October, 1935 a still located on the farm of Charles Myers in LaSalle County, Illinois, was raided and Leo Vitale arrested (R. 441; Ex. 210). Vitale, represented by Attorney Spatuzza, was arraigned before Judge Wilkerson on July 11, 1938, pleaded guilty (R. 253; Ex. 165) and was sentenced to one hour in the custody of the marshal (R. 250-251; Ex. 165). The defendant was represented by neither Roth nor Kretske nor did any of the other alleged co-conspirators except Glasser, have any relation to this case. There is no suggestion in the opinion of any misconduct by Glasser, in connection with this case. No legitimate line of presumptions could in any way relate this case to the alleged conspiracy.

Roth never represented Leo Vitale in any case civil or criminal and did not even know him (R. 874).

LIBEL ACTION AGAINST THE CHRYSLER OF ROSE VITALE.

Six weeks after disposition of the Leo Vitale criminal case, on August 21, 1938, investigators raided the residence of Vitale in Peru, Ill., and took from the garage in the rear thereof the Chrysler Sedan belonging to Rose Vitale. A proceeding *in rem* was brought to forfeit the car. Roth was engaged by Rose Vitale to recover the car. He met her for the first time when she engaged him. She was referred to Roth by Kretske. As was the custom, the case was properly presented and tried on the agent's statement (R. 718). Judge Barnes testified, " * * * that statement is not sufficient to forfeit a car. The car was not in the place where the still was, the car belonged to the wife," and that he, Judge

Barnes, had no right to take the car (R. 718). Judge Barnes also testified that Roth represented his client and Glasser represented the Government in a proper fashion.

If it is criminal for a lawyer to present his client's cause based upon her sworn pleadings, then lawyers have no place in society and litigants have no right to be heard in court.

This case was not decided by Judge Barnes on any statement by Roth "that Vitale was 'o.k.' and that the car was not used for illegal purposes," but on the agent's statement.

Roth denied making the statement that Vitale was "o.k." and in this he is corroborated by Judge Barnes, who testified that he remembered the case and that the claimant (Rose Vitale) was the wife of a bootlegger (R. 717). Moreover, what possible difference did Leo Vitale's standing in society have to do with the ultimate disposition of this proceeding *in rem* to forfeit a car?

The opinion states: "Investigator Dowd later informed Glasser that he had heard that Vitale had boasted that 'he got out of this for nine hundred dollars.'" Certainly this \$900 rumor had no reference to saving a car valued by the Government at \$425 (Ex: 36; R. 224). If this rumor, dignified as a salient fact, had reference to the criminal case of Leo Vitale, what has that to do with Roth? The rumor "he got out of this for \$900" does not refer to the recovery of a car.

If such a rumor which in no way involves Roth can be marshalled against him and wreck his career as a lawyer, then American Justice as we have known it, has fallen into decay.

There is nothing in this case from which to infer that the conduct of Roth tended to further the alleged conspiracy or that he was a party to any unlawful agreement. Even the rumor does not implicate anybody.

This concludes a review of the cases in which Roth appeared as counsel and in which Glasser represented the Government.

The opinion at page 13 then reviews the case of Edward and William Wroblewski in the Northern District of Indiana as follows:

"In April, 1938 Edward and William Wroblewski were indicted in the Northern District of Indiana. They engaged Roth as their counsel. They did not remember how they met Roth. When asked by the court if anyone recommended Roth to him, Edward answered: 'No, sir, I don't remember whether it was a rumor about his name.'"

Is it evidence of defrauding the United States of the services of Glasser simply because Edward Wroblewski engaged Roth to represent him in Indiana, a district outside of the one in which Glasser prosecuted? And is it a salient fact against Roth, that Wroblewski, in answer to a question if anyone recommended Roth to him answered, "I don't remember whether it was a rumor about his name". This Court should not speculate with the liberty of a defendant simply because somebody said there was a rumor about his name, without at least some evidence of the nature of the rumor. The rumor must have been that Roth was a lawyer specializing in the handling of cases in the federal courts which was proven at the trial (R. 796, 749-750, 782, 783, 833-834, 882, 889, 890).

This Court has held that the alleged statements of Roth to Alexander Campbell (refuted by the physical

facts, the court records, Exs. 186-A, B, and C; R. 840, correspondence, Ex. 137; R. 842, and testimony, R. 635, 676, 838, 840-842), concerning the *Wroblewski* case in Indiana were not in furtherance of the conspiracy (Opinion, p. 15), but tended to connect Roth with it by explaining his state of mind. There must however, first be some independent proof of some wrongful act before we can hold one's alleged state of mind to be proof of the actual committing of wrongful acts.

An accurate analysis of the so-called salient facts demonstrates conclusively the innocence of Roth. The Government recognized this when it frankly conceded (Gov. Br. 12):

"It is not our contention that the evidence precluded a verdict of innocence or that it compelled a conviction."

If the United States was allegedly defrauded of its governmental function, Glasser would thereby be an indispensable party.

This Court said, opinion page 4:

"Admittedly the case against Glasser is not a strong one."

and the opinion, page 10, before commenting on the evidence against Glasser states:

"Other evidence (than statements by Kretske constituting hearsay as to Glasser) tending to connect Glasser with the conspiracy is rather meager by comparison."

Yet, in the same cases in which Roth appeared as counsel with Glasser representing the Government, the evidence is considered substantial as to Roth.

Inferentially, this Court has held that the evidence against Glasser is insubstantial and that no doubt controlled this Court (Opinion, p. 4) in reversing as to Glasser on another ground, thus removing the keystone or foundation of the structure of the alleged conspiracy with the upper stories suspended in mid-air. Such inconsistent reasoning should not be the yardstick by which Justice is measured in the highest court in the land.

If the evidence against Glasser in opposing Roth was insubstantial, how can it be substantial as to Roth?

Obviously this Court erred in analyzing the evidence and a rehearing should be granted to correct same.

II.

THE TRIAL COURT IN FORCING ATTORNEY STEWART TO REPRESENT CONFLICTING INTERESTS WAS A DENIAL OF THE RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL TO GLASSER AND KRETSKE AND IN A CONSPIRACY CASE THIS PREJUDICIAL ERROR IS AVAILABLE TO ROTH.

This Court has reversed as to Glasser because he was ineffectively represented by counsel in that the trial court forced Glasser's lawyer to represent conflicting interests when he appointed him as counsel for Kretske. Although actually engaged in the trial of a case at the time the instant case was called for trial, Kretske's own lawyer who for weeks had prepared for trial, was denied a continuance. (See affidavit of Attorney Joseph Harrington, R. 174-178). The trial court ordered the immediate selection of the jury and there was nothing left for Kretske to do but accept the court's appointment of Stewart as his lawyer.

If Glasser had only half a lawyer then Kretske surely had only half a lawyer, and if Stewart was struggling

to represent two masters, the whole trial was a farce and the atmosphere of the trial was so permeated with such flagrant disregard for Constitutional rights as to affect all defendants. Failure to properly cross-examine witnesses, one instance of which is fully covered in the opinion, pages 8-9, certainly affected the petitioner, Roth, even though the particular witness did not directly implicate him. Error as to one in a conspiracy case is error as to all. *Logan v. United States*, 144 U. S. 263.

The Brantman evidence was admitted in furtherance of the alleged conspiracy against all defendants. What the jury might have done as a result of proper cross-examination of Brantman is mere speculation in which we cannot indulge to the injury of a defendant.

In *United States v. Thompson*, 113 F. (2d) 643 (CCA 7), the violation of a Constitutional right against one defendant was likewise applied to a co-defendant in a conspiracy case.

The Court at page 646, said:

"It would be unjust and illogical to separate the two cases and uphold the judgment as to one defendant and reverse it as to the other. While the Constitutional Amendments upon which the defense of illegal search and seizure is based may have been available to only one defendant, nevertheless the trial of the two together, and the introduction of evidence against them both may well have worked to the prejudice of the other."

Equal Justice to all demands a reversal as to all.

III.

ADMISSION OF EXHIBITS 81A AND 113 AGAINST GLASSER WAS PREJUDICIAL AGAINST ROTH.

The opinion at page 15 holds that since the exhibits were admitted against Glasser alone, Roth's objection is without merit. - In so holding this Court no doubt overlooked the cases of *Logan v. United States*, 144 U. S. 263; *Whealton v. United States*, 113 F. (2d) 710 (CCA 3); *United States v. Thompson*, 113 F. (2d) 643 (CCA 7).

The admission of the exhibits, consisting of various investigators' reports and a narration of the statements purportedly made to the agents by each of a large number of witnesses concerning the persons accused in the reports, being reversible error as to Glasser are likewise reversible error as to Roth.

In the *Logan* case this Court held that the acts of Logan in furtherance of the conspiracy being admissible against all the conspirators as their acts, the admission of incompetent evidence of such acts of Logan prejudiced all the defendants and entitles them to a new trial. Applying the holding in the *Logan* case, Roth is entitled to a new trial.

In *Whealton v. United States*, 113 F. (2d) 710 (CCA 3), in reversing a conviction against all defendants for failure to exclude a prejudicial exhibit introduced against one defendant the court at page 715 said:

"While the limitation of the admission of the exhibit as to Coffin fixed the extent of its legal pervue with respect to the several defendants, it is impossible to believe that its effect could be so discriminatingly limited in the minds of the jury.

The really practical effect of the improperly admitted exhibit was to predispose the jury to belief in the defendant's guilt because Coffin's implied opinion that 'offenses' had been committed."

. . .

"The possibility of harm from the improper admission of Exhibit G-8 was substantial, not only as to Coffin but as to Whealton and Commonwealth Trust Company as well. True enough, the exhibit was not admitted in evidence against Whealton and Commonwealth Trust Company, nor could it have been under any circumstances."

In *United States v. Thompson*, 113 F. (2d) 643, the Court in reversing the conviction of all defendants because of the introduction of evidence illegally seized from one defendant, at page 646, said:

"It would be unjust and illogical to separate the two cases and uphold the judgment as to one defendant and reverse it as to the other. While the Constitutional Amendments upon which the defense of illegal search and seizure is based may have been available to only one defendant, nevertheless, the trial of the two together, and the introduction of evidence against them both may well have worked to the prejudice of the other."

IV.

ADMISSION OF THE ALEXANDER CAMPBELL TESTIMONY WAS HIGHLY PREJUDICIAL AND REVERSIBLE ERROR.

The opinion at page 15 says: "The statements of Roth were not in furtherance of the conspiracy, but they did tend to connect Roth with it by explaining his state of mind". The trial court admitted the testimony of Campbell against all defendants on the general and broad ground that it was in furtherance of the conspiracy (R.

678-680, 717). The testimony was not offered or received for the strained and narrow purpose now suggested in the opinion as legitimate.

As was said by Justice Cardozo, speaking for this Court in *Shepard v. United States*, 290 U. S. 96, at page 103:

"The testimony was received by the trial judge and offered by the Government with the plain understanding that it was to be used for an illegitimate purpose, gravely prejudicial. A trial becomes unfair if testimony thus accepted may be used in an appellate court as though admitted for a different purpose, unavowed and unsuspected."

It will not do now to say for the first time, that the jury might have accepted the testimony "to explain a state of mind" and rejected it as evidence tending to show acts and conversations in furtherance of the alleged conspiracy charged. Beyond question the jury considered it for the broader purpose as the trial court intended they should.

In the *Shepard* case (*supra*), this Court at page 104 aptly said:

"Discrimination so subtle is a feat beyond the compass of ordinary minds. . . . It is for ordinary minds, and not for psychoanalysts, that our rules of evidence are framed. They have their source very often in considerations of administrative convenience, of practical expediency, and not in rules of logic. Where the risk of confusion is so great as to upset the balance of practical advantage, the evidence goes out."

"These precepts of caution are a guide to judgment here."

The danger of improper evidence reaching a jury is best illustrated by a statement of a woman juror who, while excused as a juror in the case at bar, sat in another

case. In her article appearing in the "American Bar Journal" she says:

" . . . in spite of the objections, often sustained by the judge, I couldn't help wondering whether jurors were supposed to be made of stone when they were told to disregard certain things" (R. 1054).

The admission of the Campbell testimony was reversible error.

In failing to so decide, this Court overlooked or misapprehended the prior holding of this Court, the principles of which have been applied to testimony similar to the Campbell testimony in every circuit in the land.

United States Supreme Court:

Boyd v. United States, 142 U. S. 450, 458.

First Circuit:

McDonald v. United States, 264 Fed. 733, 739;

Fish v. United States, 215 Fed. 544.

Second Circuit:

Sager v. United States, 49 F. (2d) 725, 729.

Third Circuit:

Melarango v. United States, 88 F. (2d) 264.

Fourth Circuit:

Walker v. United States, 104 F. (2d) 465;

Simpkins v. United States, 78 F. (2d) 594.

Fifth Circuit:

Fabaker v. United States, 20 F. (2d) 736.

Sixth Circuit:

Crimmian v. United States, 1 F. (2d) 643;

Nibblelink v. United States, 66 F. (2d) 178;

Frantz v. United States, 62 F. (2d) 737.

Seventh Circuit:

United States v. Dressler, 112 F. (2d) 972.

Eighth Circuit:

Nigro v. United States, 117 F. (2d) 624, 632;

Edwards v. United States, 18 F. (2d) 403;

Morrow v. United States, 11 F. (2d) 256;

Paris v. United States, 260 Fed. 529;

Gart v. United States, 294 Fed. 66.

Ninth Circuit:

McLafferty v. United States, 77 F. (2d) 715;

Flood v. United States, 36 F. (2d) 444;

Terry v. United States, 7 F. (2d) 28.

Tenth Circuit:

Coulston v. United States, 51 F. (2d) 178.

District of Columbia:

Laughlin v. United States, 92 F. (2d) 506;

Robinson v. United States, 18 F. (2d) 185.

V.

**THE GRAND JURY WAS ILLEGALLY CONSTITUTED
BECAUSE OF THE DELIBERATE EXCLUSION OF
WOMEN FROM THE JURY BOX FROM WHICH
THE GRAND JURORS WERE SELECTED.**

On July 1, 1939, the law providing for women jurors became effective. The grand jury in the case at bar was summoned August 25, 1939 and was composed entirely of men. Women were deliberately excluded. The opinion on page 3 says that in view of the short time elapsing between the effective date of the law and the summoning of the grand jury, it was not error to omit names of women from the federal jury lists where it was not shown that women's names had yet appeared on the state jury lists.

This Court overlooks the allegation in the affidavit in support of the motion to quash that the federal jury commissioner refused to follow the state law on the ground that it was not mandatory and for the further reason that acting on the advice of the prosecutor, the clerk and commissioner were not required to include female electors in their jury list (R. 148). A motion to strike the motion to quash and affidavit in support of same was filed (R. 150). "By such motion a legal question was presented which must be determined from the averments of the motion to quash." *United States v. Johnson*, 123 F. (2d) 111, 118, namely, is it mandatory for the clerk and jury commissioner to follow the state law?

The reason now given by this Court to sustain the legality of the grand jury was not relied upon in the trial court by the Government, but the prosecutor took the position that they were not required to follow the state law and the trial court so held. To exclude women jurors was a plain and flagrant violation of the law and impels a reversal here.

Moreover, if the present reasoning of this Court is to stand then every public official and citizen may deliberately violate any law 56 days after its passage with immunity and defend on the ground that the violation took place a short time after the law violated was passed.

VI.

THE TRIAL JURY WAS PACKED BY THE ILLEGAL DELEGATION OF THEIR DUTIES BY THE CLERK AND THE JURY COMMISSIONER, WHO VIOLATED THE PETITIONER'S RIGHT TO A FAIR AND IMPARTIAL TRIAL.

Glasser filed an affidavit in support of a motion for a new trial alleging that the petit jury was packed; that all the names of women placed in the box from which the panel was drawn were taken from a list furnished the clerk of the court by the Illinois League of Women Voters, and prepared exclusively from its membership, that the women on that list had attended jury classes whose lecturers presented the views of the prosecution, and that women not members of the league, but otherwise qualified were systematically excluded, and tendered an offer of proof (R. 1049-1051). By affidavit Roth joined with Glasser (R. 1057). Six of these women served as jurors in the instant case.

The Government did not controvert the affidavits by counter-affidavits or formal denials. By this conduct the Government impliedly admitted the facts alleged.

After presentation of the affidavits to the court and without argument the motion for a new trial was summarily overruled (R. 1046, 1057, 1059).

The opinion at page 19 says that the record is barren of an actual tender of proof on the part of Glasser, that Roth did not make an offer of proof in his affidavit and that the failure of the petitioners to prove their contention is fatal.

The opinion of this Court simply put, is that since the record does not disclose what Glasser and Roth said subsequent to the presenting of the affidavits the point must be overruled. This overlooks the well known actual court procedure that the presentation of an affidavit by a proponent in open court is not made mutely but with affirmation of its contents, nor does a trial court overrule a motion and the affidavit in support of it without being first advised of the facts stated in the affidavit.

Moreover, this Court should not countenance the deprivation of the fundamental right of trial by a fair and impartial jury because the record does not disclose that Glasser and Roth did not reiterate verbally that which had already been said in writing under oath.

CONCLUSION.

Petitioner from the very outset of the prosecution against him has contended and indeed, the record conclusively proves, that this prosecution was instituted out of private enmity against Glasser. The setting of such a prosecution required a bondsman, a bootlegger, and finally a lawyer who from time to time appeared as defense counsel in cases prosecuted by Glasser.

In selecting the lawyer necessary to complete its picture the Government had a varied choice as the record shows (R. 198, 251, 256, 270, 299, 311, 325, 411, 516, 556, 617, 632, 637, 696, 783).

The selection of Roth as a necessary scapegoat was aided by the fact that Kretske (then in the private practice of law) had referred a few cases to petitioner for trial.

That the petit jury, selected as it was, and sitting throughout a five week trial permeated with hostility, confusion and prejudicial misconduct, by both trial judge and prosecutor, could not see through this malicious plot is easily understood.

That the Circuit Court of Appeals was blinded by the verdict of the jury was of course disillusioning to petitioner; however he never despaired, feeling as he did, that his rights under the Constitution would zealously be guarded and invoked by appeal to the highest court in the land, a court to which a defendant could appeal without fear that petty animosity and naked jury verdicts would in themselves be sufficient to sustain the Government's burden of proving a defendant guilty beyond all reasonable doubt and to a moral certainty.

This feeling of hope was fortified by the frank concession of the Government in its brief (p. 12):

"It is not our contention that the evidence precluded a verdict of innocence, or that it compelled a conviction."

The shattering effect of the opinion of this Court on petitioner is best described in the words of that Persian Philosopher, Omar Khayyam:

"Indeed the Idols I have loved so long
Have done my Credit in Men's Eye much wrong,
Have drowned my Honour in a shallow Cup,
And sold my Reputation for a Song."

Respectfully submitted,

ALFRED E. ROTH,
Pro Se.

February, 1942.

9. 7, 16, 18

SUPREME COURT OF THE UNITED STATES.

Nos. 30, 31 and 32.—OCTOBER TERM, 1941.

Daniel D. Glasser, Petitioner,
30 *vs.*
The United States of America.

Norton I. Kretske, Petitioner,
31 *vs.*
The United States of America.

Alfred E. Roth, Petitioner,
32 *vs.*
The United States of America.

On Writs of Certiorari to the
United States Circuit Court
of Appeals for the Seventh
Circuit.

[January 19, 1942.]

Mr. Justice MURPHY delivered the opinion of the Court.

Petitioners, together with Anthony Horton and Louis Kaplan, were found guilty upon an indictment charging them with a conspiracy to defraud the United States under Section 37 of the Criminal Code (R. S. Sec. 5440; 18 U. S. C. sec. 88).¹ Judgment was entered on the verdict and Glasser, Kretske, and Kaplan were sentenced to imprisonment for a term of 14 months. Roth was ordered to pay a fine of \$500 and Horton was placed on probation. On appeal the convictions of Glasser, Kretske and Roth were affirmed.² We brought the case here because of the important constitutional issues involved. 313 U. S. 551.

Glasser was the assistant United States attorney in charge of liquor cases in the Northern District of Illinois from about March 1935 to April 1939. Kretske was an assistant United States attorney in the same district from October 1934 until April 1937. He assisted Glasser in the prosecution of liquor cases. After his resig-

¹ If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both."

² 116 F. 2d 690.

nation he entered private practice in Chicago. Roth was an attorney in private practice. Kaplan was an automobile dealer reputed to be engaged in the illicit alcohol traffic around Chicago. Horton was a professional bondsman.

The indictment was originally in two counts but only the second survives here as the Government elected to proceed on that count alone at the close of its case. That count, after alleging that during certain periods Glasser and Kretske were assistant United States attorneys for the Northern District of Illinois, employed to prosecute all delinquents for crimes and offenses cognizable under the authority of the United States, and more particularly violations of the federal internal revenue laws relating to liquor, charged in substance that the defendants conspired to "defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States" in such matters "free from corruption, improper influence, dishonesty, or fraud." The means by which the conspiracy was to be accomplished was alleged to be by the defendants' soliciting certain persons charged, or about to be charged, with violating the laws of the United States, to promise or cause to be promised certain sums to be paid or pledged to the defendants to be used to corrupt and influence the defendants Glasser and Kretske, and the defendant Glasser alone in the performance of their and his official duties.

All the defendants filed a motion to quash the indictment on the ground (a) that the grand jury was illegally constituted because women were excluded therefrom and (b) that the indictment was not properly returned in open court. Glasser, Kretske and Roth also filed demurrers to the indictment. The motion to quash and the demurrers were overruled and petitioners here renew their objections.

On July 1, 1939 two acts of the State of Illinois providing for women jurors became effective.³ Section 275 of the Judicial Code (28 U. S. C. sec. 411) provides in substance that jurors in a federal court are to have the qualifications of jurors in the highest court of the State. Petitioners contend that the grand jury, composed entirely of men, and summoned on August 25, 1939, was illegally constituted because at the time it was drawn Illinois law required state jury lists to contain the names of women. How-

³ Ill. Rev. Stat., 1939, c. 78, secs. 1 and 25.

ever, in 17 of the 18 counties comprising the Northern District of Illinois the county boards could wait until September, 1939, to include women on their jury lists.⁴ Of course, for women to serve as federal jurors in Illinois it is not necessary that their names appear on a county list, but we are of opinion that, in view of the short time elapsing between the effective date of the Illinois acts and the summoning of the grand jury, it was not error to omit the names of women from federal jury lists where it was not shown that women's names had yet appeared on the state jury lists.

The record here adequately disposes of petitioners' contention that there is no showing that the indictment was returned in open court by the grand jury. It contains a placita in regular form which recites the convening of a regular term of the District Court for the Eastern Division of the Northern District of Illinois, "on the first Monday of September [1939] (it being the twenty-ninth day of September the indictment was filed)", and discloses the presence of the judges of that court, the marshal and the clerk. The indictment bears the notation: "A true bill, George A. Hancock, Foreman" and the endorsement: "Filed in open court this 29th day of Sept., A. D. 1939, Hoyt King, Clerk." Immediately following the indictment in the record is the motion-slip discharging the September grand jury, dated September 29, 1939, initialled by Judge Wilkerson and containing: "The Grand Jury return 4 Indictments in open Court. Added 10/30/39". The presence of this notation in the record is meaningless unless the indictment in this case is one of the four mentioned. The addition was obviously made to clarify the indorsement of the clerk so as to show clearly the return by the grand jury and thus avert the technical argument here advanced. While a formal *nunc pro tunc* order would have been the more correct procedure, especially since a new term of court had begun, we do not think that this informal clarification of the record amounts to such error as requires reversal. Cf. *Breese v. United States*, 226 U. S. 1.

⁴ Section 1 of Chapter 78 of the Illinois Revised Statutes, 1939, applies to counties not having jury commissioners (into which class the 17 counties fall) and provides:

"The county board of each county shall, at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct of the county, giving the place of residence of each name on the list, to be known as the jury list."

The demurrers to the indictment were properly overruled. The indictment is sufficiently definite to inform petitioners of the charges against them. It shows "certainty, to a common intent". *Williamson v. United States*, 207 U. S. 425, 447. The particularity of time, place, circumstances, causes, etc., in stating the manner and means of effecting the object of a conspiracy for which petitioners contend is not essential to an indictment. *Crawford v. United States*, 212 U. S. 183; *Dealy v. United States*, 152 U. S. 539. Such specificity of detail falls rather within the scope of a bill of particulars, which petitioners requested and received.

The indictment charges that the United States was defrauded by depriving it of its lawful governmental functions by dishonest means; it is settled that this is a "defrauding" within the meaning of Section 37 of the Criminal Code. *Hammerschmidt v. United States*, 265 U. S. 182.

It is unnecessary to explore the merits of the argument that the indictment is defective on the ground that it charges a conspiracy to commit a substantive offense requiring concerted action, namely, bribery, because, "The indictment does not charge as a substantive offense the giving or receiving of bribes; nor does it charge a conspiracy to give or accept bribes. It charges a conspiracy to . . . defraud the United States, the scheme of resorting to bribery being averred only to be a way of consummating the conspiracy and which, like the use of a gun to effect a conspiracy to murder, is purely ancillary to the substantive offense." *United States v. Manton*, 107 F. 2d 834, 839.

Petitioners Glasser and Roth claim that the evidence was insufficient to support the verdict. Kretske makes no such argument but merely contends that the government's testimony was largely that of accomplices "to emphasize the inescapable conclusion that the evidence against petitioner (Kretske) was of a borderline character." Since we are of opinion that a new trial must be ordered as to Glasser, we do not at this time feel that it is proper to comment on the sufficiency of the evidence against Glasser.

Admittedly the case against Glasser is not a strong one. The Government frankly concedes that the case with respect to Glasser "depends in large part . . . upon a development and collocation of circumstances tending to sustain the inferences necessary to support the verdict". This is significant in relation to Glasser's

contention that he was deprived of the assistance of counsel contrary to the Sixth Amendment. In all cases the constitutional safeguards are to be jealously preserved for the benefit of the accused, but especially is this true where the scales of justice may be delicately poised between guilt and innocence. Then error, which under some circumstances would not be ground for reversal, cannot be brushed aside as immaterial since there is a real chance that it might have provided the slight impetus which swung the scales toward guilt.

On November 1, 1939 George Callaghan entered the appearance of himself and Glasser as attorneys for Glasser. On January 29, 1940 William Scott Stewart entered his appearance as associate counsel for Glasser. "Harrington & McDonnell" had entered an appearance for Kretske. On February 5, 1940, the day set for trial, Harrington asked for a continuance. The motion was overruled and McDonnell was appointed Kretske's attorney. On February 6 McDonnell informed the court that Kretske did not wish to be represented by him. The court then asked if Stewart could act as Kretske's attorney. The following discussion then took place:

"Mr. Stewart: May I make this statement about that, judge? We were talking about it—we were all trying to get along together. I filed an affidavit, or I did on the behalf of Mr. Glasser pointing out some little inconsistency in the defense, and the main part of it is this: There will be conversations here where Mr. Glasser wasn't present, where people have seen Mr. Kretske and they have talked about, that they gave money to take care of Glasser, that is not binding on Mr. Glasser, and there is a divergency there, and Mr. Glasser feels that if I would represent Mr. Kretske the jury would get an idea that they are together, and all the evidence—

"The Court: How would it be if I appointed you as attorney for Kretske?

"Mr. Stewart: That would be for your Honor to decide.

"The Court: I know you are looking out for every possible legitimate defense there is. Now, if the jury understood that while you were retained by Mr. Glasser the Court appointed you at this late hour to represent Kretske, what would be the effect of the jury on that?

"Mr. Stewart: Your Honor could judge that as well as I could.

"The Court: I think it would be favorable to the defendant Kretske.

"Mr. Glasser: I think it would be too, if he had Mr. Stewart. That's the reason I got Mr. Stewart, but if a defendant who has a lawyer representing him is allowed to enter an objection, I would like to enter my objection. I would like to have my own lawyer representing me.

"The Court: Mr. McDonnell, you will have to stay in it until Mr. Kretske gets another lawyer, if he isn't satisfied with you.

"(To Mr. Kretske) Mr. Kretske, if you are not satisfied with Mr. McDonnell, you will have to hire another lawyer. We will proceed with the selection of the jury now."

A colloquy then ensued between the court, McDonnell and Kretske when the following occurred:

"Mr. Kretske: I can end this. I just spoke to Mr. Stewart and he said if your Honor wishes to appoint him I think we can accept the appointment.

"Mr. Stewart: As long as the Court knows the situation. I think there is something to the fact that the jury knows that we can't control that.

"Mr. McDonnell: Then the order is vacated?

"The Court: The order appointing Mr. McDonnell is vacated and Mr. Stewart is appointed attorney for Mr. Kretske."

Glasser remained silent. Stewart thereafter represented Glasser and Kretske throughout the trial and was the most active of the array of defense counsel.

The guarantees of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power. Among those guarantees is the right granted by the Sixth Amendment to an accused in a criminal proceeding in a federal court "to have the assistance of counsel for his defense". "This is one of the safeguards deemed necessary to insure fundamental human rights of life and liberty" and a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel. *Johnson v. Zerbst*, 304 U. S. 458, 462, 463. Even as we have held that the right to the assistance of counsel is so fundamental that the denial by a state court of a reasonable time to allow the selection of counsel of one's own choosing, and the failure of that court to make an effective appointment of counsel, may so offend our concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment, *Powell v. Alabama*, 287 U. S. 45, so are we clear that the "assistance of counsel" guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. If the right to the assistance of counsel means less than this, a valued constitutional safeguard is substantially impaired.

389 To preserve the protection of the Bill of Rights for hard-pressed defendants, we indulge every reasonable presumption against the waiver of fundamental rights. *Actna Insurance Co. v. Kennedy*, 301 U. S. 399; *Ohio Bell Telephone Co. v. Public Utilities Commission*, 301 U. S. 292. Glasser never affirmatively waived the objection which he initially advanced when the trial court suggested the appointment of Stewart. We are told that since Glasser was an experienced attorney, he tacitly acquiesced in Stewart's appointment because he failed to vigorously renew his objection at the instant the appointment was made. The fact that Glasser is an attorney is, of course, immaterial to a consideration of his right to the protection of the Sixth Amendment. His professional experience may be a factor in determining whether he actually waived his right to the assistance of counsel. *Johnson v. Zerbst*, 304 U. S. 458, 464. But it is by no means conclusive.

Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused. Speaking of the obligation of the trial court to preserve the right to jury trial for an accused Mr. Justice Sutherland said that such duty "is not to be discharged as a matter of rote, but with sound and advised discretion, with an eye to avoid unreasonable or undue departures from that mode of trial or from any of the essential elements thereof, and with a caution increasing in degree as the offenses dealt with increase in gravity." *Patton v. United States*, 281 U. S. 276, 312-313. The trial court should protect the right of an accused to have the assistance of counsel. "This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to Counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record." *Johnson v. Zerbst*, 304 U. S. 458, 465.

No such concern on the part of the trial court for the basic rights of Glasser is disclosed by the record before us. The possibility of the inconsistent interests of Glasser and Kretake was brought home to the court, but instead of jealously guarding Glasser's rights, the court may fairly be said to be responsible for creating a situation which resulted in the impairment of those rights. For the manner in which the parties accepted the appointment indicates that they thought they were acceding to the wishes of the court. Kretake said the appointment could be accepted "if

your Honor wishes to appoint him (Stewart)", and Stewart immediately replied: "As long as the Court knows the situation. I think there is something in the fact that the jury knows we can't control that." The court made no effort to reascertain Glasser's attitude or wishes. Under these circumstances to hold that Glasser freely, albeit tacitly, acquiesced in the appointment of Stewart is to do violence to reality and to condone a dangerous laxity on the part of the trial court in the discharge of its duty to preserve the fundamental rights of an accused.

Glasser urges that the court's appointment of Stewart as counsel for Kretske embarrassed and inhibited Stewart's conduct of his defense in that it prevented Stewart from adequately safeguarding Glasser's right to have incompetent evidence excluded and from fully cross-examining the witnesses for the prosecution.

One Brantman, an accountant known to Kretske and recommended professionally by him to a client, testified that he gave Kretske \$3000 on behalf of one Abosketes. He further testified that he did not know Glasser. Stewart secured a postponement of cross-examination for "In view of the fact that your Honor appointed me for Mr. Kretske, I am not prepared to cross-examine."

Abosketes took the stand immediately after Brantman and testified that Brantman told him that he was about to be indicted and offered to "fix" the case with someone in the Federal Building for \$5000. About the time of this meeting Glasser and investigator Bailey were questioning one Brown, who had been convicted for operating a still, to determine whether Abosketes was connected with that still. Abosketes referred frequently to Glasser in his testimony and indicated that Glasser and Brantman were linked together. Thus he testified that Brantman told him "They have got the goods on you, Mr. Glasser has got it out of Brown." When questioned as to his knowledge of Brantman's connections, Abosketes replied: "There was more than a fix, if indictment was stopped. He (Brantman) knows Mr. Glasser and that was all there was to it." And, later: "He had connections to stop things like that, he had connections in the Federal Building." And, again: "I could not be sure that this man (Brantman) was not putting a shake on me and be honest about it. I could not go over and ask Mr. Glasser if Mr. Brantman was able to fix him. I thought Brantman could, though. I was kind of hoping he could. If I did not think he could, I would not have given him the money."

Brantman was re-called three days later. Stewart declined cross-examination. That this decision was influenced by a desire

to protect Kretzke can reasonably be inferred from the colloquy between the court and Stewart before sentence was imposed. At that time Stewart told the court that, lest his failure to cross-examine Brantman reflect on Kretzke, the reason for his forbearance was that he feared that Brantman would tell worse lies. But, especially after the intervening testimony of Abosketes, a thorough cross-examination was indicated in Glasser's interest to fully develop Brantman's lack of reference to, or knowledge of Glasser. Stewart's failure to undertake such a cross-examination luminates the cross-purposes under which he was laboring.

Glasser also argues that certain testimony, inadmissible as to him was allowed without objection by Stewart on his behalf because of Stewart's desire to avoid prejudice to Kretzke. The testimony complained of is that Elmer Swanson, Frank Hodorowicz, Edward Dewes, and Stanley Wasielewski as to statements made by Kretzke, not in the presence of Glasser, and heard by them which implicated Glasser. Glasser has red hair, and the statements made by Kretzke were that he would have to see "Red", or send the money over to the "red-head", etc., in connection with "fixing" cases.⁵

Glasser contends that such statements constituted inadmissible hearsay as to him and that Stewart forewent this obvious objection lest an objection on behalf of Glasser alone leave with the jury the impression that the testimony was true as to Kretzke. The Government attacks this argument as unsound, and, relying on the doctrine that the declarations of one conspirator in furtherance of the objects of the conspiracy made to a third party are admissible against

⁵ Elmer Swanson testified that when money was paid to Kretzke in connection with the Stony Island still case Kretzke said that part of it would go to "Red or Dan". The witness understood this to refer to Glasser.

Frank Hodorowicz testified that he gave \$800 in currency to Kretzke to secure favorable action with regard to a still at 124 East 118th Place. Kretzke told Frank he "had to deliver the money to Red". Hodorowicz knew this meant Glasser. Frank attempted to "fix" a case for Albina Zarrattini through Kretzke who declined after "he talked to Red" because Zarrattini talked too much.

After Frank Hodorowicz was himself indicted he went to Kretzke to "fix" his case. Kretzke told him there was "a lot of heat" on the case and "They got Glasser over a barrel, he can't do anything. He has to put you in jail."

When Edward Dewes gave Kretzke \$100 so that he would not be indicted in connection with a still at Spring Grove, Kretzke told him "he would send it over to the red-head in the Federal Building." The witness knew this meant Glasser. Dewes also testified that Kretzke told him that he, Kretzke, had resigned from the United States attorney's office under pressure, and that "for holding the bag", he was to receive favors from the "red-head".

Stanley Wasielewski testified that he heard Kretzke tell Stanley Slesur that "I will take care of everything between me and the red-head." Both Wasielewski and Slesur were involved in a still at Downers Grove.

his co-conspirators, *Logan v. United States*, 144 U. S. 263, contends that the declarations of Kretske were admissible against Glasser and hence no prejudice could arise from Stewart's failure to object. However, such declarations are admissible over the objection of an alleged co-conspirator, who was not present when they were made, only if there is proof *aliunde* that he is connected with the conspiracy. *Minner v. United States*, 57 F. 2d 506; and see *Nudd v. Burrows*, 91 U. S. 426. Otherwise hearsay would lift itself by its own bootstraps to the level of competent evidence.

Glasser urges that independent of the statements complained of there is no proof connecting him with the conspiracy. Clearly the statements were damaging. Other evidence tending to connect Glasser with the conspiracy is rather meagre by comparison. Frank Hodorowicz testified that Glasser apologized to him after his indictment because he, Glasser, could do nothing for Hodorowicz. Hodorowicz also testified that he sent a case of whiskey to Glasser for Christmas, 1937. Victor Raubunas testified that he saw Glasser, Kretske and Kaplan meet on three occasions. An alcohol agent, Dowd, testified that Glasser expelled him from the court-room during the trial of a libel case in which Roth represented the successful claimant. Glasser released Raubunas and one Joppek, who were picked up on different occasions for suspected liquor violations, without extensive questioning. Whether testimony such as this was sufficient to establish the participation of Glasser in the conspiracy we need not decide. That is beside the point. The important fact is that no objection was offered by Stewart on Glasser's behalf to the statements complained of, and this despite the fact that, when the court broached the possibility of Stewart's appointment, Stewart told the court that statements of this nature were not binding on Glasser. That this is indicative of Stewart's struggle to serve two masters cannot seriously be doubted.

There is yet another consideration. Glasser wished the benefit of the undivided assistance of counsel of his own choice. We think that such a desire on the part of an accused should be respected. Irrespective of any conflict of interest the additional burden of representing another party may conceivably impair counsel's effectiveness.

To determine the precise degree of prejudice sustained by Glasser as a result of the court's appointment of Stewart as counsel for Kretske is at once difficult and unnecessary. The right to have the assistance of counsel is too fundamental and absolute to allow

courts to indulge in nice calculations as to the amount of prejudice arising from its denial. Cf. *Snyder v. Massachusetts*, 291 U. S. 97, 116; *Tumey v. Ohio*, 273 U. S. 510, 535; *Patton v. United States*, 281 U. S. 276, 292. And see *McCandless v. United States*, 298 U. S. 342, 347. Of equal importance with the duty of the court to see that an accused has the assistance of counsel is its duty to refrain from embarrassing counsel in the defense of an accused by insisting, or indeed, even suggesting that counsel undertake to concurrently represent interests which might diverge from those of his first client, when the possibility of that divergence is brought home to the court. In conspiracy cases, where the liberal rules of evidence and the wide latitude accorded the prosecution may, and sometimes do, operate unfairly against an individual defendant, it is especially important that he be given the benefit of the undivided assistance of his counsel without the court's becoming a party to encumbering that assistance. Here the court was advised of the possibility that conflicting interests might arise which would diminish Stewart's usefulness to Glasser. Nevertheless Stewart was appointed as Kretske's counsel. Our examination of the record leads to the conclusion that Stewart's representation of Glasser was not as effective as it might have been if the appointment had not been made. We hold that the court thereby denied Glasser his right to have the effective assistance of counsel, guaranteed by the Sixth Amendment. This error requires that the verdict be set aside and a new trial ordered as to Glasser.

But this error does not require that the convictions of the other petitioners be set aside. To secure a new trial they must show that the denial of Glasser's constitutional rights prejudiced them in some manner, for where error as to one defendant in a conspiracy case requires that a new trial be granted him, the rights of his co-defendants to a new trial depend upon whether that error prejudiced them. *Agnello v. United States*, 296 U. S. 20; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150; *Rossi v. United States*, 278 F. 349; *Belfi v. United States*, 259 F. 822; *Browne v. United States*, 145 F. 2; *Dufour v. United States*, 37 App. D. C. 497. Kretske does not contend that he was prejudiced by the appointment, and we are clear from the record that no prejudice is disclosed as to him. Roth argues the point, but he was represented throughout the case by his own attorney. We fail to see that the denial of Glasser's right to have the assistance of counsel affected Roth.

Turning now to the contentions of Kretske and Roth, we are clear that substantial evidence supports the verdict against both. As noted before, Kretske does not raise the point other than to mention that the testimony against him was largely that of accomplices and unsavory characters. The short answer to this is that the credibility of a witness is a question for the jury.

The evidence against Roth discloses the following salient facts. Elmer Swanson, Clem Dowiat and Anthony Hodorowicz were arrested in connection with a still on Stony Island Avenue. Frank Hodorowicz, the head of the Hodorowicz crowd, arranged a meeting with Kretske at his hardware store to "take care" of the case. Horton was present and Kretske told the group that there "was a lot of heat" on the case but that it could be arranged so that nobody "would go to jail" for \$1200, part of which "Red" was to get. A down payment of \$500 was made. When a lawyer was sought, Kretske referred the prospective defendants to Roth. He represented them at the hearing before the Commissioner which was continued at the request of Glasser. After an indictment was returned, Roth appeared for trial to find that the case had been stricken from the docket with leave to reinstate it. The defendants were never brought to trial. None of the Hodorowiczes or their associates paid Roth for his services. Roth testified that he received his fee from Kretske.

In June 1938 Glasser secured two indictments, one against Frank, Mike, and Peter Hodorowicz and Clem Dowiat, and the other against Frank, and Peter Hodorowicz and Dowiat for the sale of illicit alcohol. Frank paid Kretske \$250 after the indictments. Kretske later told him that nothing could be done as investigator Bailey was pressing Glasser. Frank then went to see Roth, who with Kretske went to see Glasser. Roth later told Frank that nothing could be done and suggested that he get an attorney and prepare to defend himself. Roth's explanation of this was that he went to Glasser to learn the latter's attitude toward clemency for Frank, and that he suggested the retention of two lawyers, one to defend Frank, and the other to represent the remaining defendants. Frank dispensed with Roth's services and was represented at the trial by one Hess. Frank paid Roth \$50, but this was in connection with substituting some securities on his bond.

Edward Dewes had been associated with the defendant Kaplan in a still at Spring Grove. That case was twice presented to a

grand jury by Glasser but withdrawn on each occasion. Two days before it was presented a third time the defendant Horton told Dewes that Kretske wished to see him. Dewes went to Kretske's office and paid him \$100 so that he would not be indicted. Dewes was no-billed in that case. Dewes was also involved in a still on the farm of one Beisner. It was raided and several were arrested. Dewes, Victor Raubunas and Edward Farber asked Horton to "fix" that case, but when his price was thought too high, Farber, who had known Kretske for some time, took Dewes and Raubunas to Kretske's office. Kretske offered to take care of the case for \$1200. Raubunas paid \$300 and they were told they would need no lawyer at the preliminary hearing. Eventually Raubunas, Dewes and Beisner were indicted. Dewes thereafter paid Kretske \$275 to "fix" his case. Kretske referred the matter to Roth who represented Dewes throughout his trial. Dewes testified that he neither retained nor paid Roth.

Paul Svec, an associate of one Yarrio, was arrested in 1937 for a liquor violation. Horton arranged his bond. In Svec's presence Horton picked up Kretske and Yarrio. They told Svec not to worry. He was thereafter indicted and convicted. While at liberty pending an appeal he was again arrested. This time he called Glasser, and according to the latter, offered him money. The following morning Glasser interrogated Svec in the hearing of a secreted agent of the Federal Bureau of Investigation and secured admissions that Svec had never paid Glasser money or received any promises from him, and that the call had been at the instigation of the arresting investigators. Svec testified that Roth told him that he "stood up o. k." under Glasser's questioning. Svec was discharged at the Commissioner's hearing.

Glasser prosecuted Leo Vitale for the operation of a still. He was convicted and received a sentence of one hour in the custody of the marshal. Vitale's wife, Rose, was the claimant in a subsequent libel action against a car allegedly used to transport illicit liquor. The case was referred to Roth by Kretske. Roth informed the court that Vitale was "o. k." and that the car was not used for illegal purposes. As was the custom, the case was tried on the agent's report. It was dismissed. Investigator Dowd later informed Glasser that he had heard that Vitale had boasted that "he got out of this for nine hundred dollars".

In April 1938 Edward and William Wroblewski were indicted in the Northern District of Indiana. They engaged Roth as their counsel. They did not remember how they met Roth. When asked

by the court if anyone recommended Roth to him, Edward answered: "No, sir, I don't remember whether it was a rumor about his name." According to Alexander Campbell, an assistant United States attorney in that district, Roth appeared in his office in September 1938 and asked if the Wroblewskis had been indicted. Campbell replied that he did not know off-hand but would check the files. Roth then asked, if the files showed no indictment, whether some arrangement could be made so that no indictment would be returned. He offered Campbell \$500 or \$1000. When Campbell refused, Roth said: "Well, that is the way we handle cases in Chicago sometimes". The Wroblewskis were convicted. Subsequently Roth asked Campbell to use his influence to stop the investigation in Chicago by Bailey which resulted in the instant case.

It is not for us to weigh the evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it. *United States v. Manton*, 107 F. 2d 834, 839, and cases cited. Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a "development and a collocation of circumstances". *United States v. Manton, supra*. We are clear that from the circumstances outlined above the jury could infer the existence of a conspiracy and the participation of Roth in it. Roth's statements to Campbell in the Wroblewski matter, his suggestion to Frank Hodorowicz that he should get a lawyer and prepare to defend himself when the case could not be "fixed", the fact that he received no fees from the Hodorowiczses with the exception of \$50 in connection with Frank's bond, Dewes' testimony that he neither retained nor paid Roth, Roth's commendation of Svec's bearing under Glasser's interrogation, all furnish the necessary support for the jury's verdict.

The objections of Kretske and Roth with regard to the admission of certain evidence are without merit. The reports of investigators of the Alcohol Tax Unit on stills at Western Avenue and at Spring Grove, operated by the defendant Kaplan and his associates, were admitted as Government exhibits 81A and 113. Each contained statements taken from prospective witnesses by the investigators, and each gave a description of the prospective defendants. Kaplan was referred to as of Jewish descent, a boot-legger by reputation, and mention was made of the arrest of

Kaplan and Edward Dewes in connection with the killing of one Pinna. At the time each report was admitted the trial judge informed the jury that it was admitted only against Glasser and continued: "At some further stage of the proceedings I may advise you with reference to its competency as to the other defendants, but for the time being it will be admissible only against the defendant Glasser". The record before us contains no indication that the jury was later informed that the exhibits were evidence against the defendants other than Glasser. The claim of Kretske and Roth that the admission of these reports was prejudicial to Kaplan and that they are entitled to take advantage of that error ignores the fact that they were admitted against Glasser alone.

No reversible error was committed by overruling objections to the testimony of Alexander Campbell with relation to his dealings with Roth. Trial judges have a measure of discretion in allowing testimony which discloses the purpose, knowledge, or design of a particular person. *Butler v. United States*, 53 F. 2d 800; *Simpkins v. United States*, 78 F. 2d 594, 598. We do not think the bounds of that discretion were exceeded here. The statements of Roth were not in furtherance of the conspiracy, but they did tend to connect Roth with it by explaining his state of mind.

The judge conducting a jury trial in a federal court is "not a mere moderator, but is the governor of the trial for the purpose of insuring its proper conduct". *Quercia v. United States*, 289 U. S. 466, 469. Upon him rests the responsibility of striving for that atmosphere of perfect impartiality which is so much to be desired in a judicial proceeding. Petitioners contend that the trial judge made remarks prejudicial to them, committed acts of advocacy, questioned them in a hostile manner, unduly limited cross-examination, and in general failed to maintain an impartial attitude. Various incidents in support of those contentions are brought to our attention.

The court did interrogate several witnesses, but in the main such interrogation was within its power to elicit the truth by an examination of the witnesses. *United States v. Gross*, 103 F. 2d 11; *United States v. Breen*, 96 F. 2d 782. In asking Anthony Hodorowicz whether there had been a full disclosure of his connection with the Stony Island still when he appeared before Judge Woodward the court obviously was under a misapprehension of the nature of the appearance. It was simply for the purpose of arraignment, and of course no testimony was offered. Much is made of this, but

at the time no one attempted to explain to the court the nature of the appearance. Stewart later brought out on cross-examination that it was only an arraignment and that there was no necessity for testimony on that day.

After the testimony of Abosketes the court read into the record the fact that Abosketes was indicted in Wisconsin in 1936 and 1938, and that he pleaded guilty to one indictment and that the other was dismissed. It is, of course, improper for a judge to assume the role of a witness, but we cannot here conclude that prejudicial error resulted. Abosketes had briefly referred to his troubles in Wisconsin in his testimony.

The alleged undue limitation of cross-examination merits scant attention. The extent of such examination rests in the sound discretion of the trial court. *Alford v. United States*, 282 U. S. 687. We find no abuse of that discretion.

Perhaps the court did not attain at all times that thoroughgoing impartiality which is the ideal, but our examination of the record as a whole leads to the conclusion that the substantial rights of the petitioners were not affected. The trial was long and the incidents relied on by petitioners few. We must guard against the magnification on appeal of instances which were of little importance in their setting. Cf. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 240; *Goldstein v. United States*, 28 F. 2d 609; *United States v. Warren*, 120 F. 2d 211.

Separate consideration of the numerous instances of alleged prejudicial misconduct on the part of the prosecuting attorney would unduly extend this opinion. Suffice it to say that after due consideration we conclude that no one instance, nor the combination of them all constitutes reversible error.

All the petitioners contend that they were denied an impartial trial because of the alleged exclusion from the petit jury panel of all women not members of the Illinois League of Women Voters. In support of their motions for a new trial Glasser and Roth filed affidavits which are the basis of petitioners' present contentions. Kretzke did not file an affidavit, but he urges the point here.

Glasser swore on information and belief that all the names of women placed in the box from which the panel was drawn were taken from a list furnished the clerk of the court by the Illinois League of Women Voters, and prepared exclusively from its membership, that the women on that list had attended "jury classes whose lecturers presented the views of the prosecution", and

that women not members of the League, but otherwise qualified, were systematically excluded, by reason of which affiant "did not have a trial by a jury free from bias, prejudice, and prior instructions, and as a result thereof the jury was disqualified and this affiant's rights were prejudiced in that he was deprived of a trial by jury guaranteed to him by the laws and the constitution of the United States of America, and particularly the 5th and 6th amendment, all of which he offers to prove." The source of Glasser's information was stated to be a then current article, "Women and the Law", in the American Bar Association Journal for April 1940 (Vol. 26, No. 4). Roth's affidavit merely gave Glasser as his source of information and made no offer of proof. The court overruled the motions for a new trial. The record discloses that the jury was composed of six men and six women.

Since it was first recognized in Magna Carta, trial by jury has been a prized shield against oppression, but while proclaiming trial by jury as "the glory of the English law", Blackstone was careful to note that it was but a "privilege". *Commentaries*, Book 3, p. 379. Our Constitution transforms that privilege into a right in criminal proceedings in a federal court. This was recognized by Justice Story: "When our more immediate ancestors removed to America, they brought this great privilege (trial by jury in criminal cases) with them, as their birthright and inheritance, as a part of that admirable common law which had fenced round and interposed barriers on every side against the approaches of arbitrary power. It is now incorporated into all our state constitutions as a fundamental right, and the Constitution of the United States would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms." 2 Story, Const. sec. 1779.

Lest the right of trial by jury be nullified by the improper constitution of juries, the notion of what a proper jury is has become inextricably intertwined with the idea of jury trial. When the original Constitution provided only that "The trial of all crimes, except in cases of impeachment, shall be by jury;"⁶ the people and their representatives, leaving nothing to chance, were quick to implement that guarantee by the adoption of the Sixth Amendment which provides that the jury must be impartial.

For the mechanics of trial by jury we revert to the common law as it existed in this country and in England when the Constitu-

⁶ Const., Art. III, § 2, cl. 3.

tion was adopted. *Patton v. United States*, 281 U. S. 276. But even as jury trial, which was a privilege at common law, has become a right with us, so also, whatever limitations were inherent in the historical common law concept of the jury as a body of one's peers do not prevail in this country. Our notions of what a proper jury is have developed in harmony with our basic concepts of a democratic society and a representative government. For "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community." *Smith v. Texas*, 311 U. S. 128. 130.

73 Jurors in a federal court are to have the qualifications of those in the highest court of the State, and they are to be selected by the clerk of the court and a jury commissioner. Secs. 275, 276 Jud. Code; 28 U. S. C. secs. 411, 412. This duty of selection may not be delegated. *United States v. Murphy*, 224 F. 554; *In re Petition for a Special Grand Jury*, 50 F. 2d 438. And, its exercise must always accord with the fact that the proper functioning of the jury system, and, indeed, our democracy itself, requires that the jury be a "body truly representative of the community", and not the organ of any special group or class. If that requirement is observed, the officials charged with choosing federal jurors may exercise some discretion to the end that competent jurors may be called. But they must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross-section of the community. Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted. That the motives influencing such tendencies may be of the best must not blind us to the dangers of allowing any encroachment whatsoever on this essential right. Steps innocently taken may one by one lead to the irretrievable impairment of substantial liberties.

The deliberate selection of jurors from the membership of particular private organizations definitely does not conform to the traditional requirements of jury trial. No matter how high principled and imbued with a desire to inculcate public virtue such organizations may be, the dangers inherent in such a method of selection are the more real when the members of those organizations from training or otherwise acquire a bias in favor of the prosecution. The jury selected from the membership of such an organization is

then not only the organ of a special class, but, in addition, it is also openly partisan. If such practices are to be countenanced, the hard won right of trial by jury becomes a thing of doubtful value, lacking one of the essential characteristics that have made it a cherished feature of our institutions.

So, if the picture in this case actually is as alleged in Glasser's affidavit, we would be compelled to set aside the trial court's denial of the motion for a new trial as a clear abuse of discretion, and order a new trial for all the petitioners. But from the record before us we must conclude that petitioners' showing is insufficient. The Government did not controvert the affidavits by counter-affidavits or formal denial, and it does not appear from the record that any argument was heard on them. From this petitioners argue that the allegations of the affidavits are to be taken as true for the purpose of the motion. However, this is not a case where the prosecution has impliedly, *Neal v. Delaware*, 103 U. S. 370, or actually, *Hale v. Kentucky*, 303 U. S. 613, stipulated that affidavits in support of a motion alleging the improper constitution of a jury may be accepted as proof. In the absence of such a stipulation, it is incumbent on the moving party to introduce, or to offer, distinct evidence in support of the motion; the formal affidavit alone, even though uncontroverted, is not enough. *Smith v. Mississippi*, 162 U. S. 592; *Tarrance v. Florida*, 188 U. S. 519; cf. *Brownfield v. South Carolina*, 189 U. S. 426. Glasser, in his affidavit, offered to prove the allegations contained therein, but the record is barren of any actual tender of proof on his part. Furthermore, there is no indication that the court refused to entertain such an offer, if it were in fact made. Roth did not even make an offer of proof in his affidavit, and Kretake did not file one. While it is error to refuse to hear evidence offered in support of allegations that a jury was improperly constituted, *Carter v. Texas*, 177 U. S. 442, there is, and, on the state of this record, can be no assertion that such error was here committed. The failure of petitioners to prove their contention is fatal.

We conclude that the conviction of Glasser must be set aside and the cause as to him remanded to the District Court for the Eastern Division of the Northern District of Illinois for a new trial. The convictions of petitioners Kretake and Roth are in all respects upheld.

It is so ordered.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

SUPREME COURT OF THE UNITED STATES.

Nos. 30, 31, 32.—OCTOBER TERM, 1941.

Daniel D. Glasser, Petitioner,
30 *vs.*
The United States of America.

Norton I. Kretake, Petitioner,
31 *vs.*
The United States of America.

Alfred E. Roth, Petitioner,
32 *vs.*
The United States of America.

On Writs of Certiorari to the
United States Circuit Court
of Appeals for the Seventh
Circuit.

[January 19, 1942.]

Mr. Justice FRANKFURTER.

The CHIEF JUSTICE and I are of opinion that the conviction of Glasser, as well as that of his co-defendants, should stand.

It is a commonplace in the administration of criminal justice that the actualities of a long trial are too often given a meretricious appearance on appeal; the perspective of the living trial is lost in the search for error in a dead record. To set aside the conviction of Glasser (a lawyer who served as an Assistant United States Attorney for more than four years) after a trial lasting longer than a month on the ground that he was denied the basic constitutional right "to have the assistance of counsel for his defence" is to give fresh point to this regrettably familiar phenomenon. For Glasser himself made no such claim at any of the critical occasions throughout the proceedings. Neither when the judge appointed Stewart to act as counsel for both Kretake and Glasser, nor at any time during the long trial, nor in his motions to set aside the verdict and to arrest judgment, nor in his plea to the court before sentence was passed, nor in setting forth his grounds for appeal, did Glasser assert, or manifest in any way a belief, that he was denied the effective assistance of counsel. Not until twenty weeks after Stewart had become counsel for the co-defendant Kretake, and fifteen weeks

after the trial had ended, did Glasser discover that he had been deprived of his constitutional rights. This was obviously a lawyer's afterthought. It does not promote respect for the Bill of Rights to turn such an afterthought into an imaginary injury that is reflected nowhere in the contemporaneous record of the trial and make it the basis for reversal.

The guarantees of the Bill of Rights are not abstractions. Whether their safeguards of liberty and dignity have been infringed in a particular case depends upon the particular circumstances. The fact that Glasser is an attorney of course does not mean that he is not entitled to the protection which is afforded all persons by the Sixth Amendment. But the fact that he is an attorney with special experience in criminal cases, and not a helpless illiterate, may be—as we believe it to be here—extremely relevant in determining whether he was denied such protection.

In this light, what does the record show? Before the trial got under way the trial judge was presented with a problem created by the inability of one of Kretske's lawyers to try the case in his behalf. Kretske was dissatisfied with his other lawyer, who professed to be unfamiliar with the many details of the case. Upon Kretske's motion for a continuance, the judge was faced with the difficulty of avoiding either delay of the trial or an undesirable severance as to Kretske. All the defendants, including Glasser, and their counsel were present in court. The judge asked whether Stewart, who had been retained by Glasser, would be prepared to act also for Kretske. The record gives no possible ground for any inference other than that this suggestion came from the judge as a fair and disinterested proposal to solve a not unfamiliar trial problem. It is not, and indeed could not be, contended that the judge's suggestion, addressed to the consideration of the defendants, was not wholly proper. And so, when Stewart raised the question of a possible conflict of interest, and Glasser himself objected, saying "I would like to have my own lawyer representing me", the judge neither remonstrated nor argued. He promptly dropped his suggestion and directed Kretske's other lawyer, who was present but with whom Kretske was dissatisfied, to stay in the case until Kretske could hire someone to his satisfaction. The footnote sets forth the full text of this episode.¹

¹ "Mr. Stewart: May I make this statement about that, judge? We were talking about it—we were all trying to get along together. I filed an affidavit, or I did on the behalf of Mr. Glasser pointing out some little inconsistency in

There ensued a long discussion relating to the representation of Kretske. During this discussion the judge never again adverted to his original suggestion that Stewart also represent Kretske. Kretske interrupted, and there then occurred in Glasser's presence what is now made the basis for reversal:

"Mr. Kretske: I can end this. I just spoke to Mr. Stewart and he said if your Honor wishes to appoint him I think we can accept the appointment.

"Mr. Stewart: As long as the Court knows the situation. I think there is something to the fact that the jury knows we can't control that.

"Mr. McDonnell: Then the order is vacated?

"The Court: The order appointing Mr. McDonnell is vacated and Mr. Stewart is appointed attorney for Mr. Kretske."

It is clear, therefore, that this arrangement was voluntarily assumed by the parties, and was not pressed upon them by the judge. Glasser, who was present, raised no objection and made no comment.

The requirement that timely objections be made to prejudicial rulings of a trial judge often has the semblance of traps for the unwary and uninformed. But Glasser was neither unwary nor uninformed. His experience in the prosecution of criminal cases makes his silence here most significant. Nor was this the last opportunity he had to indicate that embarrassment was being caused him by Stewart's representation of Kretske, let alone that he deemed

the defense, and the main part of it is this: There will be conversations here where Mr. Glasser wasn't present, where people have seen Mr. Kretske and they have talked about, that they gave money to take care of Glasser, that is not binding on Mr. Glasser, and there is a divergency there, and Mr. Glasser feels that if I would represent Mr. Kretske the jury would get an idea that they are together, and all the evidence—

The Court: How would it be if I appointed you as attorney for Mr. Kretske?

Mr. Stewart: That would be for your Honor to decide.

The Court: I know you are looking out for every possible legitimate defense there is. Now, if the jury understood that while you were retained by Mr. Glasser the Court appointed you at this late hour to represent Kretske, what would be the effect of the jury on that?

Mr. Stewart: Your Honor could judge that as well as I could.

The Court: I think it would be favorable to the defendant Kretske.

Mr. Glasser: I think it would be too, if he had Mr. Stewart. That's the reason I got Mr. Stewart, but if a defendant who has a lawyer representing him is allowed to enter an objection, I would like to enter my objection. I would like to have my own lawyer representing me.

The Court: Mr. McDonnell, you will have to stay in it until Mr. Kretske gets another lawyer, if he isn't satisfied with you. (To Mr. Kretske) Mr. Kretske, if you are not satisfied with Mr. McDonnell, you will have to hire another lawyer. We will proceed with the selection of the jury now."

it a denial of his constitutional rights. If he were laboring under a handicap, he would have made it known at the times when he felt it most—during the long course of the trial, in his motions for new trial and in arrest of judgment, in his extended plea to the court before sentence was passed, and finally when, on April 26, 1940, over his own signature he gave twenty grounds for appeal but did not mention this one. The long period of uninterrupted silence concerning his after-discovered injury negatives its existence. We find it difficult to know what acquiescence in a judge's ruling could be, if this record does not show it.²

A fair reading of the record thus precludes the inference that the judge forced upon Glasser a situation which hobbled him in his defense. To be sure, he did say at first that he would like his lawyer to represent him alone. But he plainly acquiesced in the arrangement which, after consultation at the defense table, was proposed to the trial judge and which the judge accepted. A conspiracy trial presents complicated questions of strategy for the defense. There are advantages and disadvantages in having separate counsel for each defendant or a single counsel for more than one. Joint representation is a means of insuring against reciprocal recrimination. A common defense often gives strength against a common attack. These considerations could not have escaped a lawyer of Glasser's experience. His thorough acquiescence in the proceedings cannot be reconciled with a denial of his constitutional rights.

A belated showing that Glasser was actually prejudiced by the judge's action is now attempted. This has two aspects: (1) Stewart's failure to cross-examine the witness Brantman, and (2) his failure to make objections on behalf of Glasser to the admission of certain evidence.

(1) The Brantman episode evaporates upon examination. His only testimony relating to Glasser was that he did not know him.

² Stewart was designated to represent Kretzke on February 6, 1940, when the trial began. The jury brought in its verdict on March 8. The motions for new trial and in arrest of judgment were denied on April 23, and on the same day the defendants were sentenced. On April 26, Glasser filed a notice setting forth twenty grounds of appeal without suggesting that he had been denied his right to the assistance of counsel. On June 27, Glasser and the two other petitioners filed a "joint and several assignment of errors", for the first time asserting that: "The court erred in appointing the employed counsel of defendant Daniel D. Glasser to represent defendant Norton I. Kretzke, to the prejudice of the defendants."

This was brought out fully and distinctly on direct examination.³ That it had been amply established, Glasser himself recognized in his address to the court before sentence. It is difficult to understand how cross-examination would have been of any further benefit to Glasser. In any event, the record shows that Stewart abstained from cross-examining Brantman not because he felt himself inhibited by any conflict of interest but because, as he told the judge after verdict, he thought that on cross-examination Brantman "would be telling worse lies".

(2) It is said that Stewart's failure to object, on behalf of Glasser, to certain evidence in itself proves that Stewart felt himself restricted—wholly regardless of the admissibility of such evidence. No evidence inadmissible against Glasser is avouched. Indeed we are told that it is "beside the point" that the evidence is admissible. Can it be that a lawyer who fails to make frivolous objections to admissible evidence is thereby denying his client the constitutional right to the assistance of counsel?

³ "Q. Do you know Mr. Glasser?

A. No, sir,

Q. Did you ever see him before the time you got this money?

A. I have seen him, I think I might have been introduced to the man once, but I don't think it was before I got that money.

Q. You never had any conversation with him in any event?

A. No, sir.

Q. What?

A. No, sir."